REVISED AGENDA
(REVISED TO ADD A TELECONFERENCE LOCATION AND ADD A CONTINUED ITEM FROM JULY 7, 2026)

BERKELEY CITY COUNCIL MEETING

Tuesday, July 14, 2026
6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702
TELECONFERENCE LOCATION - 1027 BANCROFT WAY, BERKELEY, CA 94710

ADENA ISHII, MAYOR

COUNCILMEMBERS:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB
DISTRICT 5 – SHOSHANA O'KEEFE
DISTRICT 6 – BRENT BLACKABY
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

*This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using Zoom. To request to speak, use the "raise hand" function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter **Meeting ID: 165 600 1486.** To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the public record, email council@berkeleyca.gov.*

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

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person. The City Council may take action related to any subject listed on the Agenda.

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

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

Preliminary Matters

Roll Call:

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

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

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

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

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

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

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

Consent Calendar

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

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

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

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

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

Consent Calendar – Continued Business

A. FY 2027 Annual Appropriations Ordinance *(Continued from July 7, 2026)*
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 8,209-N.S. adopting the FY 2027 Annual Appropriations Ordinance (AAO) in the amount of $922,346,116 (gross appropriations) and $796,579,332 (net appropriations)
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Maricar Dupaya, Budget Manager, (510) 981-7000

Consent Calendar

1. 2027 Tax Rate: Transportation Network Company User Tax
From: City Manager
Recommendation: Adopt second reading of an Ordinance No. 8,030–N.S. setting the 2027 tax rate (effective January 1, 2027) for the transportation network company at the following rates: 65.1005 cents on the user for each prearranged trip that originates in the City that is not part of a pooled prearranged trip and 31.7889 for each pooled prearranged trip on each user who arranges each prearranged trip that originates in the City and which comprises part of the pooled prearranged trip.
First Reading Vote: Ayes – Kesarwani, Taplin, Tregub, O'Keefe, Blackaby, Lunaparra, Humbert, Ishii; Noes – None; Abstain – None; Absent – Bartlett.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300

2. Initiative Petition – Ordinance Creating a Parcel Tax to Fund Arts Institutions and Programs
From: City Manager
Recommendation:
1. Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.
2. If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.
Financial Implications: No direct fiscal impacts
Contact: Mark Numainville, City Clerk, (510) 981-6900

3. Initiative Petition – Ordinance Creating a Parcel Tax to Fund a Public Bank
From: City Manager
Recommendation:
1. Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.
2. If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.
Financial Implications: No direct fiscal impacts
Contact: Mark Numainville, City Clerk, (510) 981-6900

Consent Calendar

4. Initiative Petition – Ordinance Replacing the City's $0.01/oz General Tax on Sugar Sweetened Beverages With a $0.02/oz Special Tax to Fund Public Health, Nutrition and Water Access
From: City Manager
Recommendation:
1. Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.
2. If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.
Financial Implications: No direct fiscal impacts
Contact: Mark Numainville, City Clerk, (510) 981-6900

5. Police Accountability Board – Appointment of Alternate Member
From: City Manager
Recommendation: Adopt a Resolution appointing an Alternate Commissioner to the Police Accountability Board (PAB).
Financial Implications: See report
Contact: Mark Numainville, City Clerk, (510) 981-6900

6. Police Accountability Board – Appointment of New Member
From: City Manager
Recommendation: Adopt a Resolution appointing a new member to the Police Accountability Board (PAB) nominated by Mayor Ishii.
Financial Implications: See report
Contact: Mark Numainville, City Clerk, (510) 981-6900

7. Appointment of Director of Public Works
From: City Manager
Recommendation: Adopt a Resolution confirming the appointment of James (Jamie) Parks as the Director of Public Works to be effective August 17, 2026, at an annual salary of $270,000.
Financial Implications: See report
Contact: David White, City Manager's Office, (510) 981-7000

8. 2026 Capacity Building Request for Proposals Funding Recommendations
From: City Manager
Recommendation: Adopt a Resolution to: 1. Approve a capacity building contract with Bay Area Community Land Trust (BACLT) for Fiscal Years 2027 and 2028 for $200,000 per fiscal year, subject to approval in the budget process; and 2. Authorize the City Manager or designee to execute all original or amended documents or agreements to effectuate this action.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

Consent Calendar

9. Accept Future of Public Health Funds from the State of California – Fiscal Year 2027 through Fiscal Year 2029
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to execute grant agreements, and any resultant amendments, with the State of California for the Future of Public Health program in the amount of $912,213 for each of the following fiscal years: Fiscal Year 2027, Fiscal Year 2028, and Fiscal Year 2029 (Total not to exceed $2,736,639).
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

10. Contract No. 32400161 Amendment: Building Opportunities for Self-Sufficiency for Representative Payee Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to execute a contract amendment with Building Opportunities for Self-Sufficiency (BOSS) for Representative Payee Services in an amount not to exceed $400,000 for the term of July 1, 2023, to June 30, 2027.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

11. Contract No. 32600032 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for Public Facilities Improvements Program
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager, or designee, to amend Contract No. 32600032 with Building Opportunities for Self-Sufficiency (BOSS), increasing the amount by $54,480 for a public facility improvement project for a total amount not to exceed $249,480 with the contract end date of June 30, 2027.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

12. Approval and Levy of 2018 Clean Stormwater Fee in FY 2027
From: City Manager
Recommendation: Adopt a Resolution approving the proposed adjusted fees for the 2018 Clean Stormwater Fee and ordering the levy of the fees in Fiscal Year 2027.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

Consent Calendar

13. Contract No. 32300214 Amendment: Belfor USA Group for On-Call Emergency Restoration, Mitigation and Remediation Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment with Belfor USA Group for on-call emergency restoration, mitigation and remediation services, increasing the contract amount by $400,000 for a new not-to-exceed amount of $550,000 and extending the contract term through March 11, 2028.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

14. Contract No. 32600081 Amendment: Metro Elevator for Maintenance, Repairs and Emergency Response Services for Citywide Elevators
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment with Metro Elevator to provide maintenance, repairs, and emergency response services to increase the contract amount by $300,000 for a total not to exceed $650,000.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

15. Contract: Daupler, Inc. for After-Hours Answering Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Daupler, Inc. for after-hours answering services in an amount not to exceed $375,000 for a three-year contract, with an option to extend for two additional one-year terms.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

16. Purchase Order: National Auto Fleet Group for Chevrolet Silverado Electric Trucks
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a purchase order with National Auto Fleet Group for ten all electric Chevrolet Silverado Trucks in an amount not to exceed $790,000.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

17. Purchase Order: Turf Star, Inc. for GO-4 Parking Enforcement Vehicles
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a purchase order with Turf Star, Inc. for nine GO-4 Parking Enforcement Vehicles in an amount not to exceed $550,000.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

Council Consent Items

18. Bertha Brown Community Memorial Gathering and Hunger Program Recognition – Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds
From: Councilmember Bartlett (Author)
Recommendation: Adopt a Resolution approving the expenditure of funds, including $1,000 from the discretionary Council Office Budget of Councilmember Ben Bartlett for the South Berkeley Community Church Hunger Program Community Memorial Gathering honoring Bertha Brown and associated accessibility services. The funds will be relinquished to the City's General Fund from the Discretionary Council Office Budget of Councilmember Ben Bartlett and the Discretionary Council Office Budgets of any other Councilmembers who would like to contribute.
Financial Implications: None
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

19. Adopt a Position of Opposition to ACA 22, the California Two-Thirds Vote Requirement for Special Taxes
From: Councilmember Tregub (Author)
Recommendation: Adopt a position in opposition to Assembly Constitutional Amendment (ACA) 22, which would restrict how local governments may adopt certain taxes and distribute copies of a letter of opposition to Governor Gavin Newsom, Senator Jesse Arreguín, Assemblymember Buffy Wicks, and applicable Senate and Assembly Committees.
Financial Implications: See report
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

20. Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds to Support of the Raising the Next Generation of Student Advocates (RISE) Program
From: Councilmember Tregub (Author)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember from the D13 Discretionary Accounts of members of the Berkeley City Council, including a contribution of $250 from Councilmember Igor Tregub, and inviting additional Councilmembers to contribute, to support the Berkeley Public Schools Fund’s RISE (Raising the Next Generation of Student Advocates) program.
Financial Implications: See report
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

Action Calendar

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

The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the

Action Calendar

public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

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

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

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by first the appellant and then the applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, 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 during a public hearing, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

When applicable, 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.

21. Lease Agreement: International Child Resource Institute (ICRI) for 125-127 University Avenue Office Space
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance executing a five-year lease agreement with International Child Resource Institute to lease second floor office space located at 125-127 University Ave in the Berkeley Waterfront. The lease term is anticipated to begin September 1, 2026, and end August 31, 2031.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

22. Levy and Collection of Fiscal Year 2027 Street Lighting Assessments
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion adopt two Resolutions confirming the assessments for the Berkeley Street Lighting Assessment District No. 1982-1 and the Street Lighting Assessment District 2018, approving the Engineer’s Reports, and authorizing the levying and collection of assessments in Fiscal Year 2027.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

Council Action Items

23a. Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units And Updating Mutual Aid Policies *(Reviewed by the Public Safety Policy Committee)*

From: Councilmember Kesarwani (Author)

Recommendation: Adopt a Resolution to rescind Resolution No. 51,408-N.S. which currently restricts the use of helicopters and police canine units by the Berkeley Police Department (BPD) and to update policies authorizing BPD to deploy these resources through mutual aid agreements directly with external agencies. Under the revised policy framework, mutual aid requests for air support resources will require pre-deployment approval by the Watch Commander or their designee and will be followed by post-deployment notification to the City Manager, comprehensive incident documentation, and annual public reporting to the City Council and Police Accountability Board. The policy will continue to explicitly prohibit the use of canines for crowd control and will codify additional categorical prohibitions on canine deployments for low-level offenses.

Policy Committee Recommendation: To send the item with a Qualified Positive recommendation to Council that includes: 1) clarifying Section 3(a) to more clearly define the purposes for which the canine team may be deployed, and 2) attaching the communication from the Police Accountability Board to the agenda item for consideration by the full City Council.

Financial Implications: See report

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

23b. Social Justice Implications of Proposed Use of Controlled Weapons and Other Policing Tools *(Continued from April 21, 2026)*

From: Peace and Justice Commission

Recommendation: Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools: 1. Retain the existing 2020 bans on chemical weapons (CS and OC), and the 1982 bans on police dogs and helicopters. 2. Retain the 1997 requirement for public reporting of each use of pepper spray. 3. Request the City Manager to engage an academic institution such as UC Berkeley, UCSF, or Stanford to study the health impacts of tear gas and other chemical weapons and canine support, potential short-term and long-term impacts on vulnerable populations and possible alternatives to the use of chemical weapons that provide officer safety, suspect safety, and safety to the general public.

Financial Implications: None

Contact: Tasha Tervalon, Commission Secretary, (510) 981-7000

Council Action Items

24a. Resolution Reinstating the Berkeley Police Department's Ability to Use Tear Gas for Critical Life-Threatening Incidents Only and Lifting the COVID-19 Moratorium on Smoke and Oleoresin Capsicum (OC) Spray *(Reviewed by the Public Safety Policy Committee)*
From: Councilmember Kesarwani (Author)
Recommendation: Adopt a Resolution amending the Berkeley City Council's June 9, 2020 direction regarding smoke, OC spray, and tear gas to allow the Berkeley Police Department (BPD) Special Response Team (SRT) to use tear gas under circumstances in which there is a significant risk of injury or death, maintain the prohibition on the use of tear gas solely for crowd control, and lift the temporary moratorium on the use of smoke and OC spray.
Policy Committee Recommendation: To send the item with a Qualified Positive recommendation to Council that includes: 1) Making the resolution text explicit regarding permissible uses and policy limitations (particularly defining "critical incident" and excluding crowd control use), 2) Clarifying and attaching relevant use policies for public transparency, and 3) Developing an appropriate after-action reporting framework aligned with existing reporting and Transparency Hub practices.
Financial Implications: See report
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

24b. Social Justice Implications of Proposed Use of Controlled Weapons and Other Policing Tools *(Continued from April 21, 2026)*
From: Peace and Justice Commission
Recommendation: Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools: 1. Retain the existing 2020 bans on chemical weapons (CS and OC), and the 1982 bans on police dogs and helicopters. 2. Retain the 1997 requirement for public reporting of each use of pepper spray. 3. Request the City Manager to engage an academic institution such as UC Berkeley, UCSF, or Stanford to study the health impacts of tear gas and other chemical weapons and canine support, potential short-term and long-term impacts on vulnerable populations and possible alternatives to the use of chemical weapons that provide officer safety, suspect safety, and safety to the general public.
Financial Implications: None
Contact: Tasha Tervalon, Commission Secretary, (510) 981-7000

Information Reports

25. Grant Applications: Alameda County Transportation Commission Capital Investment Program 2028/Metropolitan Transportation Commission One Bay Area Grant Program Cycle 4
From: City Manager
Contact: Wahid Amiri, Public Works, (510) 981-6300

26. Zero Waste Commission Fiscal Year 2026-27 Work Plan
From: Zero Waste Commission
Contact: Julia Heath, Commission Secretary, (510) 981-6300

Public Comment – Items Not Listed on the Agenda

Adjournment

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

Archived indexed video streams are available at: berkeleyca.gov/council-agendas.
Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

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

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

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

City Clerk Department - 2180 Milvia Street, First Floor
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901
Email: clerk@berkeleyca.gov

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

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

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

If you have obtained interpretation services for your use during a City Council meeting and would like to request assistance, please contact the City Clerk Department at (510) 981-6900, clerk@berkeleyca.gov, or in-person during the meeting.

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

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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 July 9, 2026.

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.

Ohlone Greenway Question
1. Barbara Fritz

Channing and San Pablo
2. Thomas Yamaguchi
3. Wahid Amiri

Height Regulations
4. Lynn Cooper

BUSD LEARNS Program
5. Alina Ball

Upzoning/Zoning
6. Gcmclaughlin (2)

Fund Raiser
7. Brianna Hernandez

West Berkeley Rail Crossings
8. Noa Weiss

Community Resource Guide
9. Elizabeth (4)
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Michael's Transportation Services
10. Elizabeth

McGee Avenue Reconstruction
11. Howard Menashe

2036 Bancroft Way
12. Alex Merenkov

Safety Concern
13. Derek Abbassi

Budget
14. Ben Buettner
15. Dorothea Dorenz

BAC Funding
16. Thet Shein Win

Public Comment Concern
17. Stephen Alpert
18. Lauren Packard

Harrison St.
19. Jahlee Arakaki

URLs
20. Phyllis Orrick
21. Russbumper

E-Scooters
22. Carson Lepre (2)
23. Robert Borghese (2)

Newsletters
24. Eid Abdallah (2)

Forwards
25. Eid Abdallah (8)

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.

A

ORDINANCE NO. 8,029-N.S.

ADOPTING THE ANNUAL APPROPRIATIONS ORDINANCE BASED ON THE ADOPTED BUDGET FOR FISCAL YEAR 2027 AS PROPOSED BY THE CITY MANAGER AND PASSED BY THE CITY COUNCIL

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

Section 1. That the Annual Appropriations Ordinance based on the budget for FY 2027 submitted by the City Manager and passed by the City Council be adopted as follows and as summarized in Exhibit A:

A. General Fund (Funds 001-099)	327,990,533
B. Special Funds (Funds 100-199)	218,939,270
C. Grant Funds (Funds 300-399)	53,177,554
D. Capital Projects Funds (Funds 500-550)	52,206,879
E. Debt Service Fund (Funds 551-599)	17,341,098
F. Enterprise Funds (Funds 600-669)	171,997,862
G. Internal Service Funds (Funds 146, 670-699)	61,359,860
H. Trust Funds (Funds 701-759)	213,777
H. Successor Agency (Funds 760-769)	57,120
I. Agency Funds (Funds 771-799)	7,763,308
J. Other Funds (Funds 800-899)	11,298,855
K. Total	
Total General Fund	327,990,533
Add: Total Other Than General Fund	594,355,583
Gross Revenue Appropriated	**922,346,116**
Less: Dual Appropriations	-67,208,538
Less: Revolving/Internal Service Funds	-58,558,246
Net Revenue Appropriated	**796,579,332**

Section 2. The City Manager is hereby permitted, without further authority from the City Council, to make the following transfers by giving written notice to the Director of Finance:

a. From the General Fund to the General Fund – Stability Reserve Fund; Catastrophic Reserve Fund; PERS Savings Fund; Health State Aid Realignment; Fair Election Fund; Capital Improvement Fund; Phone System Replacement; Equipment Replacement Fund; Public Liability Fund; Catastrophic Loss Fund; IT Cost Allocation Fund: Police Employee Retiree Health Assistance Plan; Safety Members Pension Fund; Marina Fund; Measure U1; Sick Leave Entitlement Fund; and Payroll Deduction Trust Fund.

b. To the General Fund from the General Fund – Stability Reserves Fund; Catastrophic Reserves Fund; Community Development Block Grant Fund; Street Lighting Assessment District Fund; Zero Waste Fund; Marina Operations and Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Unified Program (CUPA); and Health State Aid Realignment Fund; Measure U1.

c. From GF-Payroll Deduction Trust Fund to Employee Training Fund; General Fund

d. To the First Source Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.

e. From Measure U1 Fund to the Workers Compensation Fund.

f. From the Catastrophic Reserve Fund to the Playground Camp Fund.

g. From the Library Tax Fund to Library Reserves Fund.

h. From Gilman Sports Field Fund to Gilman Field Reserve Fund

i. From Measure FF-Public Safety Fund to Paramedic Tax Fund.

j. From the American Rescue Plan Fund to the General Fund; Sports Field Fund; Playground Camp Fund; Marina Fund; Off-Street Parking Fund; and Parking Meter Fund.

k. From Capital Improvement Fund to PERS Savings Fund; Berkeley Repertory Theater Fund; and 2010 COP (Animal Shelter) Fund.

l. To the Public Art Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.

m. To CFD#1 District Fire Protection Bond (Measure Q) from Special Tax Bonds CFD#1 ML-ROOS.

n. To Private Sewer Lateral Fund from Sanitary Sewer Operation Fund.

o. To Catastrophic Loss Fund from Permit Service Center Fund; and Unified Program (CUPA) Fund.

p. To the Building Purchases and Management Fund from General Fund; Health (General) Fund; Rental Housing Safety Program Fund; Measure B Local Streets & Road Fund; Employee Training Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Health State Aide Realignment Trust Fund.

q. To Equipment Replacement Fund from General Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.

r. To the Equipment Maintenance Fund from General Fund; Health (General) Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Library - Discretionary Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Rent Stabilization Board Fund; Parks Ta Fund; Street Light Assessment District Fund; FEMA Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.

s. To the Building Maintenance Fund from the General Fund; Health (General) Fund; Health (Short/Doyle) Fund; Measure B Local Street & Road Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Mental Health State Aid Realignment Fund.

t. To the Central Services Fund from the General Fund; First Source Fund; Health (Short/Doyle) Fund; Library-Discretionary Fund; Playground Camp Fund; Rent Stabilization Board Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Mental Health State Aid Realignment Fund.

u. To Information Technology Cost Allocation Plan Fund from General Fund; Target Case Management/Linkages Fund; Health (Short/Doyle); Library Fund;

Playground Camp Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Equipment Maintenance Fund; Building Maintenance Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; and Mental Health State Aid Realignment Fund.

v. To the Workers' Compensation Self-Insurance Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; Fair Election Fund; Measure U1 Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers' Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

w. To the Sick Leave and Vacation Leave Accrual Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities

Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; Fair Election Fund; Measure U1 Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers' Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

x. To the Payroll Deduction Trust Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; Fair Election Fund; Measure U1 Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund;

Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers' Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund; PERS Savings; Sick Leave Entitlement.

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.

At a regular meeting of the Council of the City of Berkeley held on July 7, 2026, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Blackaby, Humbert, Kesarwani, Lunaparra, O'Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: None.

Attachment for Annual Appropriations Ordinance - Fiscal Year 2027

REVOLVING FUNDS/INTERNAL SERVICE FUNDS

Appropriations are identified with revolving and internal service funds. Such funds derive revenue by virtue of payment from other fund sources as benefits are received by such funds, and the total is reflected in the "Less Revolving Funds and Internal Service Funds" in item I. The funds are:

Revolving/Internal Service Funds	
Employee Training Fund	832,239
Equipment Replacement Fund	14,071,895
Equipment Maintenance Fund	11,072,559
Building Maintenance Fund	4,849,695
Central Services Fund	413,179
Workers' Compensation Fund	6,567,967
Public Liability Fund	3,760,097
Information Technology Fund	16,990,615
Subtotal Revolving/Internal Service Funds	$ 58,558,246

DUAL APPROPRIATIONS - WORKING BUDGET

Dual appropriations are identified with revenues generated by one fund and transferred to another fund. Both funds are credited with the applicable revenue, and the total is reflected in the "Less Dual Appropriations" in item I. The dual appropriations are:

Transfers to the General Fund	
Indirect Cost Reimbursement	
CDBG Fund	176,194
Street Light Assessment District Fund	165,368
Zero Waste Fund	3,054,931
Marina Enterprise Fund	484,283
Sanitary Sewer Fund	1,441,311
Clean Storm Water Fund	258,425
Permit Service Center Fund	2,782,679
Unified Program (CUPA) Fund	124,934
Subtotal Transfers to General Fund:	$ 8,488,125

Transfer to Measure U1 Fund from General Fund	6,600,000
Transfer to Animal Shelter Fund from General Fund	2,454,237
Transfer to PERS Savings Fund from General Fund	500,000
Transfer to Health State Aid Realignment from General Fund	1,953,018
Transfer to Fair Election Fund from General Fund	612,210
Transfer to Capital Improvement Fund (CIP) from General Fund	13,438,105
Transfer to Equipment Replacement Fund from General Fund	1,355,362
Transfer to Public Liability Fund from General Fund	3,446,161
Transfer to Catastrophic Loss Fund from General Fund	9,628,358
Transfer to Police Employee Retiree Health Assistance Plan from General Fund	400,136
Transfer to Sick Leave Entitlement Fund from General Fund	367,604
Transfer from GF Payroll Deduction Trust Fund to Employee Training Fund	750,000
Transfer to Local Housing Trust Fund from Measure U1 Fund	1,855,000
Transfer to Library Reserve Fund from Lbrary-Tax Fund	8,772,214
Transfer to General Fund from Health State Aid Realignment Fund	2,821,293
Transfer to Paramedic Tax Fund from Measure FF - Public Safety Fund	757,925
Transfer to Berkeley Repertory Theater Debt Service Fund from CIP Fund	499,802
Transfer from CIP Fund to 2010 COP (Animal Shelter) Fund	402,613
Transfer to Private Sewer Lateral Fund from Sewer Fund	90,501
Transfer to Catastrophic Loss Fund from Permit Service Center Fund	50,555
Transfer to Catastrophic Loss Fund from Unified Program (CUPA) Fund	5,082
Transfer to General Fund from IT Cost Allocation Fund	1,080,728
Transfer to GF Payroll Deduction Trust Fund from Sick Leave Entitlement Fund	273,854
Transfer to First Source Fund from Parks Tax Fund	41,438
Transfer to First Source Fund from Capital Improvement Fund	80,154
Transfer to Public Art Fund from Parks Tax Fund	72,516
Transfer to Public Art Fund from Measure FF-Streets	271,279
Transfer to Public Art Fund from Capital Improvement Fund	140,270
Subtotal Transfers to Other Funds:	58,720,413
Sub-Total Dual Appropriations	$ 67,208,538
Grand Total Dual Appropriations	**$ 125,766,784**

SUMMARY OF APPROPRIATIONS BY FUND

ERMA Fund #	Fund	FY 2027 Adopted
11	General Fund Discretionary	315,764,545
13	GF - Payroll Deduction Trust	750,000
16	Measure U1 - Housing	11,475,988
101	Library - Tax	38,873,066
102	Library - Trans Based	3,800,000
103	Library - Grants	110,000
104	Library - Friends & Gift	183,000
105	Library - Foundation	200,000
106	Asset Forefeiture	61,000
107	Special Tax Measure E	1,972,678
108	Workforce Investment	61,379
110	Sec 108 Loan Gty Asst.	1,183,612
111	Fund Raising Activities	258,662
113	Gilman Sports Field	345,014
115	Animal Shelter	2,818,172
116	Paramedic Tax	5,158,767
119	Domestic Violence Prev - Vit Stat	31,261
120	Affordable Housing Mitigation	25,347,986
121	Affordable Child Care	240,982
122	Inclusionary Housing Program	606,924
123	Condo Conversion	933,121
125	Playground Camp	5,591,322
126	State-Prop 172 Pub.Safety	303,150
127	State Transportation Tax	10,602,412
128	CDBG	3,234,680
129	Rental Housing Safety Program	2,508,173
131	Measure B - Bike & Pedestrian	42,396
133	Measure F Alameda County VRF St & Rd	749,879
134	Measure BB - Local St & Road	9,914,294
135	Meaure BB - Bike & Pedestrian	1,915,592
136	Measure BB - Paratransit	943,791
137	One-Time Funding	5,114,300
138	Parks Tax	26,089,319
139	Streets and Open Space Improvement (SOSIP)	2,800,000
140	Measure GG - Fire Prep Tax	5,738,458
142	Streetlight Assesment District	3,960,537
143	Berkeley Bus Ec Dev	156,387
145	Bayer-Miles Lab	100,000
146	Employee Training	832,239
147	UC Settlement	5,624,244
148	Cultural Trust	186,830
149	Private Party Sidewalks	300,000
150	Public Art Fund	162,252
152	Vital & Health Statistics Trust Fund	23,550

SUMMARY OF APPROPRIATIONS BY FUND

ERMA Fund #	Fund	FY 2027 Adopted
156	Hlth State Aid Realign Trust	5,419,935
157	Tobacco Cont.Trust	358,174
158	Mental Health State Aid Realign	4,008,124
159	Citizens Option Public Safety Trust	658,140
161	Alameda Cty Abandoned Vehicle Abatement	119,570
164	Measure FF - Public Safety	11,629,476
165	Fair Elections	672,470
166	Measure FF - Street Repair	27,180,781
302	Operating Grants - State	7,989,032
305	Capital Grants - Federal	500,000
306	Capital Grants - State	1,547,000
307	Capital Grants - Local	758,250
309	OTS DUI Enforcement Education Prg.	253,900
310	HUD/Home	1,595,935
311	ESG	226,367
312	Health (General)	2,638,541
313	Target Case Management Linkages	932,067
315	Mental Health Service Act	13,425,796
316	Health (Short/Doyle)	3,980,850
317	EPSDT Expansion Proposal	437,043
318	Alcoholic Bev Ctr OTS/UC	97,330
319	Youth Lunch	41,782
320	Sr. Nutrition Title III	246,233
321	CFP Title X	179,713
324	BUSD Grant	269,807
326	Alameda County Grants	621,735
328	Family Care Support Program	115,112
329	CA Integrated Waste Management	23,244
331	Housing Mitigation	1,345,533
333	CALHOME	202,744
334	CSBG	329,232
336	One-Time Grant: No Cap Exp	1,889,431
339	MTC	1,122,000
340	FEMA	3,249,982
341	Alameda Cty Waste Mgt.	500,000
343	State Dept Conserv/Recylg	32,000
347	Shelter+Care HUD	7,230,907
348	Shelter+Care County	1,024,051
349	JAG Grant	50,000
350	Bioterrorism Grant	321,938
501	Capital Improvement Fund	14,803,696
502	Phone System Replacement	449,408
503	FUND$ Replacement	2,159,869
504	PEG-Public, Education & Government	267,210

EXHIBIT A

SUMMARY OF APPROPRIATIONS BY FUND

ERMA Fund #	Fund	FY 2027 Adopted
511	Measure T1 - Infra & Facil.	212,498
512	Measure O	34,314,198
552	09 Measure FF Debt Service	1,336,638
553	2015 GORBS	2,062,791
554	2012 Lease Revenue Bonds BJPFA	501,283
555	2015 GORBS - 2002 G.O. Refunding Bonds	381,552
556	2015 GORBS (2007, Series A)	143,615
557	2015 GORBS (2008 Measure I)	483,822
558	2010 COP (Animal Shelter)	140,085
559	Measure M GO Street & Water Imps	1,635,600
560	Infrastucture & Facilities Measure T1	3,752,681
561	Measure O - Housing Bonds	6,903,033
601	Zero Waste	64,052,954
608	Marina Operation	7,535,322
611	Sewer	41,215,597
612	Private Sewer Lateral FD	77,848
616	Clean Storm Water	9,876,763
621	Permit Service Center	28,635,790
622	Unified Program (CUPA)	1,172,868
627	Off Street Parking	7,700,602
631	Parking Meter	9,419,091
636	Building Purchases and Management	2,311,026
671	Equipment Replacement	14,071,895
672	Equipment Maintenance	11,072,559
673	Building Maintenance Fund	4,849,695
674	Central Services	413,179
676	Workers Compensation	6,567,967
678	Public Liability	3,760,097
679	Catastrophic Loss	3,447,023
680	IT Cost Allocation	16,990,615
706	Police Medical Trust Fund	48,281
721	Retiree Medical Trust Fund - BHA	2,970
722	Retiree Medical Trust Fund - IBEW	2,563
723	Retiree Medical Trust Fund - Local 1	22,595
724	Retiree Medical Trust Fund - Z1 Mgmt.	4,000
725	Retiree Medical Trust Fund - Z2 To Z6	12,000
726	Retiree Medical Trust Fund - Local 535	32,191
727	Retiree Medical Trust Fund - Local 790	37,106
731	Police EE Retiree Health Ast Plan	6,500
736	Fire Medical Trust Fund	45,571
762	Successor Agency - Savo DSF	57,120
774	Sustainable Energy - 2	17,038
776	Thousand Oaks Underground	97,006
777	Measure H - School Tax	500,000

SUMMARY OF APPROPRIATIONS BY FUND

ERMA Fund #	Fund	FY 2027 Adopted
778	Measure Q - CFD#1 Dis. Fire Protect Bond	108,850
779	Spl Tax Bds. CFD#1 ML-ROOS	779,811
780	Sick Leave Entitlement	322,955
781	Berkeley Tourism BID	2,298,135
782	Elmwood Business Improvement District	30,000
783	Solano Ave BID	25,000
784	Telegraph Avenue Bus. Imp. District	667,525
785	North Shattuck BID	248,903
786	Downtown Berkeley Prop & Improv. District	2,668,086
801	Rent Board	11,298,855
	GROSS EXPENDITURE:	**922,346,116**
	Dual Appropriations	(67,208,538)
	Revolving & Internal Service Funds	(58,558,246)
	NET EXPENDITURE:	**796,579,332**

AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, July 14, 2026
6:00 PM

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

ADENA ISHII, MAYOR

COUNCILMEMBERS:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB
DISTRICT 5 – SHOSHANA O'KEEFE
DISTRICT 6 – BRENT BLACKABY
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

*This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using Zoom. To request to speak, use the "raise hand" function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter **Meeting ID: 165 600 1486.** To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the public record, email council@berkeleyca.gov.*

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

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person. The City Council may take action related to any subject listed on the Agenda.

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

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

Preliminary Matters

Roll Call:

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

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

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

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

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

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

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

Consent Calendar

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

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

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

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

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

Consent Calendar

1. 2027 Tax Rate: Transportation Network Company User Tax
From: City Manager
Recommendation: Adopt second reading of an Ordinance No. 8,030–N.S. setting the 2027 tax rate (effective January 1, 2027) for the transportation network company at the following rates: 65.1005 cents on the user for each prearranged trip that originates in the City that is not part of a pooled prearranged trip and 31.7889 for each pooled prearranged trip on each user who arranges each prearranged trip that originates in the City and which comprises part of the pooled prearranged trip.
First Reading Vote: Ayes – Kesarwani, Taplin, Tregub, O'Keefe, Blackaby, Lunaparra, Humbert, Ishii; Noes – None; Abstain – None; Absent – Bartlett.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

2. Initiative Petition – Ordinance Creating a Parcel Tax to Fund Arts Institutions and Programs
From: City Manager
Recommendation:
1. Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.
2. If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.
Financial Implications: No direct fiscal impacts
Contact: Mark Numainville, City Clerk, (510) 981-6900

3. Initiative Petition – Ordinance Creating a Parcel Tax to Fund a Public Bank
From: City Manager
Recommendation:
1. Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.
2. If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.
Financial Implications: No direct fiscal impacts
Contact: Mark Numainville, City Clerk, (510) 981-6900

4. Initiative Petition – Ordinance Replacing the City's $0.01/oz General Tax on Sugar Sweetened Beverages With a $0.02/oz Special Tax to Fund Public Health, Nutrition and Water Access
From: City Manager
Recommendation:
1. Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.
2. If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.
Financial Implications: No direct fiscal impacts
Contact: Mark Numainville, City Clerk, (510) 981-6900

5. Police Accountability Board – Appointment of Alternate Member
From: City Manager
Recommendation: Adopt a Resolution appointing an Alternate Commissioner to the Police Accountability Board (PAB).
Financial Implications: See report
Contact: Mark Numainville, City Clerk, (510) 981-6900

Consent Calendar

6. Police Accountability Board – Appointment of New Member
From: City Manager
Recommendation: Adopt a Resolution appointing a new member to the Police Accountability Board (PAB) nominated by Mayor Ishii.
Financial Implications: See report
Contact: Mark Numainville, City Clerk, (510) 981-6900

7. Appointment of Director of Public Works
From: City Manager
Recommendation: Adopt a Resolution confirming the appointment of James (Jamie) Parks as the Director of Public Works to be effective August 17, 2026, at an annual salary of $270,000.
Financial Implications: See report
Contact: David White, City Manager's Office, (510) 981-7000

8. 2026 Capacity Building Request for Proposals Funding Recommendations
From: City Manager
Recommendation: Adopt a Resolution to: 1. Approve a capacity building contract with Bay Area Community Land Trust (BACLT) for Fiscal Years 2027 and 2028 for $200,000 per fiscal year, subject to approval in the budget process; and 2. Authorize the City Manager or designee to execute all original or amended documents or agreements to effectuate this action.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

9. Accept Future of Public Health Funds from the State of California – Fiscal Year 2027 through Fiscal Year 2029
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to execute grant agreements, and any resultant amendments, with the State of California for the Future of Public Health program in the amount of $912,213 for each of the following fiscal years: Fiscal Year 2027, Fiscal Year 2028, and Fiscal Year 2029 (Total not to exceed $2,736,639).
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

10. Contract No. 32400161 Amendment: Building Opportunities for Self-Sufficiency for Representative Payee Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to execute a contract amendment with Building Opportunities for Self-Sufficiency (BOSS) for Representative Payee Services in an amount not to exceed $400,000 for the term of July 1, 2023, to June 30, 2027.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

Consent Calendar

11. Contract No. 32600032 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for Public Facilities Improvements Program
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager, or designee, to amend Contract No. 32600032 with Building Opportunities for Self-Sufficiency (BOSS), increasing the amount by $54,480 for a public facility improvement project for a total amount not to exceed $249,480 with the contract end date of June 30, 2027.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

12. Approval and Levy of 2018 Clean Stormwater Fee in FY 2027
From: City Manager
Recommendation: Adopt a Resolution approving the proposed adjusted fees for the 2018 Clean Stormwater Fee and ordering the levy of the fees in Fiscal Year 2027.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

13. Contract No. 32300214 Amendment: Belfor USA Group for On-Call Emergency Restoration, Mitigation and Remediation Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment with Belfor USA Group for on-call emergency restoration, mitigation and remediation services, increasing the contract amount by $400,000 for a new not-to-exceed amount of $550,000 and extending the contract term through March 11, 2028.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

14. Contract No. 32600081 Amendment: Metro Elevator for Maintenance, Repairs and Emergency Response Services for Citywide Elevators
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment with Metro Elevator to provide maintenance, repairs, and emergency response services to increase the contract amount by $300,000 for a total not to exceed $650,000.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

15. Contract: Daupler, Inc. for After-Hours Answering Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Daupler, Inc. for after-hours answering services in an amount not to exceed $375,000 for a three-year contract, with an option to extend for two additional one-year terms.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

Consent Calendar

16. Purchase Order: National Auto Fleet Group for Chevrolet Silverado Electric Trucks
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a purchase order with National Auto Fleet Group for ten all electric Chevrolet Silverado Trucks in an amount not to exceed $790,000.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

17. Purchase Order: Turf Star, Inc. for GO-4 Parking Enforcement Vehicles
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a purchase order with Turf Star, Inc. for nine GO-4 Parking Enforcement Vehicles in an amount not to exceed $550,000.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

Council Consent Items

18. Bertha Brown Community Memorial Gathering and Hunger Program Recognition – Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds
From: Councilmember Bartlett (Author)
Recommendation: Adopt a Resolution approving the expenditure of funds, including $1,000 from the discretionary Council Office Budget of Councilmember Ben Bartlett for the South Berkeley Community Church Hunger Program Community Memorial Gathering honoring Bertha Brown and associated accessibility services. The funds will be relinquished to the City's General Fund from the Discretionary Council Office Budget of Councilmember Ben Bartlett and the Discretionary Council Office Budgets of any other Councilmembers who would like to contribute.
Financial Implications: None
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

19. Adopt a Position of Opposition to ACA 22, the California Two-Thirds Vote Requirement for Special Taxes
From: Councilmember Tregub (Author)
Recommendation: Adopt a position in opposition to Assembly Constitutional Amendment (ACA) 22, which would restrict how local governments may adopt certain taxes and distribute copies of a letter of opposition to Governor Gavin Newsom, Senator Jesse Arreguín, Assemblymember Buffy Wicks, and applicable Senate and Assembly Committees.
Financial Implications: See report
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

Council Consent Items

20. Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds to Support of the Raising the Next Generation of Student Advocates (RISE) Program
From: Councilmember Tregub (Author)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember from the D13 Discretionary Accounts of members of the Berkeley City Council, including a contribution of $250 from Councilmember Igor Tregub, and inviting additional Councilmembers to contribute, to support the Berkeley Public Schools Fund's RISE (Raising the Next Generation of Student Advocates) program.
Financial Implications: See report
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

Action Calendar

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

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

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

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

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by first the appellant and then the applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, 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 during a public hearing, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

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

Action Calendar – Public Hearings

21. Lease Agreement: International Child Resource Institute (ICRI) for 125-127 University Avenue Office Space
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance executing a five-year lease agreement with International Child Resource Institute to lease second floor office space located at 125-127 University Ave in the Berkeley Waterfront. The lease term is anticipated to begin September 1, 2026, and end August 31, 2031.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

22. Levy and Collection of Fiscal Year 2027 Street Lighting Assessments
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion adopt two Resolutions confirming the assessments for the Berkeley Street Lighting Assessment District No. 1982-1 and the Street Lighting Assessment District 2018, approving the Engineer's Reports, and authorizing the levying and collection of assessments in Fiscal Year 2027.
Financial Implications: See report
Contact: Wahid Amiri, Public Works, (510) 981-6300

Council Action Items

23a. Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units And Updating Mutual Aid Policies *(Reviewed by the Public Safety Policy Committee)*
From: Councilmember Kesarwani (Author)
Recommendation: Adopt a Resolution to rescind Resolution No. 51,408-N.S. which currently restricts the use of helicopters and police canine units by the Berkeley Police Department (BPD) and to update policies authorizing BPD to deploy these resources through mutual aid agreements directly with external agencies. Under the revised policy framework, mutual aid requests for air support resources will require pre-deployment approval by the Watch Commander or their designee and will be followed by post-deployment notification to the City Manager, comprehensive incident documentation, and annual public reporting to the City Council and Police Accountability Board. The policy will continue to explicitly prohibit the use of canines for crowd control and will codify additional categorical prohibitions on canine deployments for low-level offenses.
Policy Committee Recommendation: To send the item with a Qualified Positive recommendation to Council that includes: 1) clarifying Section 3(a) to more clearly define the purposes for which the canine team may be deployed, and 2) attaching the communication from the Police Accountability Board to the agenda item for consideration by the full City Council.
Financial Implications: See report
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Council Action Items

23b. Social Justice Implications of Proposed Use of Controlled Weapons and Other Policing Tools *(Continued from April 21, 2026)*
From: Peace and Justice Commission
Recommendation: Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools: 1. Retain the existing 2020 bans on chemical weapons (CS and OC), and the 1982 bans on police dogs and helicopters. 2. Retain the 1997 requirement for public reporting of each use of pepper spray. 3. Request the City Manager to engage an academic institution such as UC Berkeley, UCSF, or Stanford to study the health impacts of tear gas and other chemical weapons and canine support, potential short-term and long-term impacts on vulnerable populations and possible alternatives to the use of chemical weapons that provide officer safety, suspect safety, and safety to the general public.
Financial Implications: None
Contact: Tasha Tervalon, Commission Secretary, (510) 981-7000

24a. Resolution Reinstating the Berkeley Police Department's Ability to Use Tear Gas for Critical Life-Threatening Incidents Only and Lifting the COVID-19 Moratorium on Smoke and Oleoresin Capsicum (OC) Spray *(Reviewed by the Public Safety Policy Committee)*
From: Councilmember Kesarwani (Author)
Recommendation: Adopt a Resolution amending the Berkeley City Council's June 9, 2020 direction regarding smoke, OC spray, and tear gas to allow the Berkeley Police Department (BPD) Special Response Team (SRT) to use tear gas under circumstances in which there is a significant risk of injury or death, maintain the prohibition on the use of tear gas solely for crowd control, and lift the temporary moratorium on the use of smoke and OC spray.
Policy Committee Recommendation: To send the item with a Qualified Positive recommendation to Council that includes: 1) Making the resolution text explicit regarding permissible uses and policy limitations (particularly defining "critical incident" and excluding crowd control use), 2) Clarifying and attaching relevant use policies for public transparency, and 3) Developing an appropriate after-action reporting framework aligned with existing reporting and Transparency Hub practices.
Financial Implications: See report
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Council Action Items

24b. Social Justice Implications of Proposed Use of Controlled Weapons and Other Policing Tools *(Continued from April 21, 2026)*
From: Peace and Justice Commission
Recommendation: Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools: 1. Retain the existing 2020 bans on chemical weapons (CS and OC), and the 1982 bans on police dogs and helicopters. 2. Retain the 1997 requirement for public reporting of each use of pepper spray. 3. Request the City Manager to engage an academic institution such as UC Berkeley, UCSF, or Stanford to study the health impacts of tear gas and other chemical weapons and canine support, potential short-term and long-term impacts on vulnerable populations and possible alternatives to the use of chemical weapons that provide officer safety, suspect safety, and safety to the general public.
Financial Implications: None
Contact: Tasha Tervalon, Commission Secretary, (510) 981-7000

Information Reports

25. Grant Applications: Alameda County Transportation Commission Capital Investment Program 2028/Metropolitan Transportation Commission One Bay Area Grant Program Cycle 4
From: City Manager
Contact: Wahid Amiri, Public Works, (510) 981-6300

26. Zero Waste Commission Fiscal Year 2026-27 Work Plan
From: Zero Waste Commission
Contact: Julia Heath, Commission Secretary, (510) 981-6300

Public Comment – Items Not Listed on the Agenda

Adjournment

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

Archived indexed video streams are available at: berkeleyca.gov/council-agendas.
Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or

any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

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

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

City Clerk Department - 2180 Milvia Street, First Floor
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901
Email: clerk@berkeleyca.gov

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

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

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

If you have obtained interpretation services for your use during a City Council meeting and would like to request assistance, please contact the City Clerk Department at (510) 981-6900, clerk@berkeleyca.gov, or in-person during the meeting.

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

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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 July 2, 2026.

Mark Numainville, City Clerk
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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.

Ohlone Greenway Question
1. Barbara Fritz

Channing and San Pablo
2. Thomas Yamaguchi
3. Wahid Amiri

Height Regulations
4. Lynn Cooper

BUSD LEARNS Program
5. Alina Ball

Upzoning/Zoning
6. Gcmclaughlin (2)

Fund Raiser
7. Brianna Hernandez

West Berkeley Rail Crossings
8. Noa Weiss

Community Resource Guide
9. Elizabeth (4)

Michael's Transportation Services
10. Elizabeth

McGee Avenue Reconstruction
11. Howard Menashe

2036 Bancroft Way
12. Alex Merenkov

Safety Concern
13. Derek Abbassi

Budget
14. Ben Buettner
15. Dorothea Dorenz

BAC Funding
16. Thet Shein Win

Public Comment Concern
17. Stephen Alpert
18. Lauren Packard

Harrison St.
19. Jahlee Arakaki

URLs
20. Phyllis Orrick
21. Russbumper

E-Scooters
22. Carson Lepre (2)
23. Robert Borghese (2)

Newsletters
24. Eid Abdallah (2)

Forwards
25. Eid Abdallah (8)

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.

01

ORDINANCE NO. 8,030-N.S.

IMPOSING A GENERAL TAX ON USERS OF TRANSPORTATION NETWORK COMPANIES AT A RATE OF 65.1005 CENTS FOR PRIVATE TRIPS AND 31.7889 CENTS FOR POOLED TRIPS

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

Section 1. The 2027 Tax Rate, effective January 1, 2027, to fund general municipal services is set at 65.1005 cents for private trips and 31.7889 for pooled trips.

Section 2. This tax rate will result in estimated total collections of $1,184,855.

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.

At a regular meeting of the Council of the City of Berkeley held on June 30, 2026, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Blackaby, Humbert, Kesarwani, Lunaparra, O'Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: Bartlett.

02

Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Initiative Petition - Ordinance Creating a Parcel Tax to Fund Arts Institutions and Programs

RECOMMENDATION

1) Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.

2) If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impacts related to the recommended action.

CURRENT SITUATION AND ITS EFFECTS

An initiative petition titled "Initiative Ordinance Creating a Parcel Tax to Fund Arts Institutions and Programs" was filed with the City Clerk on May 4, 2026. The proponents of this petition submitted 4,629 prima facie signatures.

Under Berkeley City Charter Article XIII, the number of valid signatures required for a sufficient petition is at least 5% of the votes for all candidates for Mayor in the previous mayoral election. In November 2024, there were 52,493 votes for candidates for Mayor, with 5% of that number equaling 2,625.

The Alameda County Registrar of Voters verified the signatures based on the random sample examination set forth in accordance with California Elections Code Sections 9211 and 9115. The petition was certified by the Registrar of Voters as being sufficient on May 19, 2026.

Additionally, with respect to who can author arguments for measures placed on the ballot by petition, Elections Code Section 9282 provides the City Council may authorize the Council as a whole, or members of the Council, to submit an argument against the initiative ordinance. The Council may also decline to designate an author to file an argument against the measure.

BACKGROUND

Pursuant to the City Charter, Article XIII, Section 92, once a petition has been found to have a sufficient amount of signatures, the City Council must consider whether to a) Adopt said ordinance without alteration within twenty days after the attachment of the City Clerk's certificate of sufficiency to the accompanying petition (subject to a referendary vote, under the provision of Article XIV of this Charter); or b) Submit the ordinance to the voters of the City of Berkeley at the next general election. However, since this initiative imposes a tax, it must be placed on the ballot and cannot be adopted by the Council.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The proposed action is mandated by state codes and the provisions of the City Charter.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. Resolution
   Exhibit A: Full Text of Measure
2. City Clerk's Certificate of Sufficiency

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

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE CREATING A PARCEL TAX TO FUND ARTS INSTITUTIONS AND PROGRAMS FOR THE NOVEMBER 3, 2026 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2026 General Municipal Election, an Initiative Ordinance Creating a Parcel Tax to Fund Arts Institutions and Programs; and

WHEREAS, certain actions are required in connection with said election; and

WHEREAS, through Resolution No. 72,236-N.S. adopted on April 21, 2026, the Council has requested that the Alameda County Board of Supervisors consolidate the General Municipal Election with the Presidential General Election; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that full text of the measure and the City Attorney's analysis shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the Registrar of Voters of Alameda County is requested to perform services in connection with said election at the request of the City Clerk.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed initiative measure shall appear and be printed upon the ballots to be used at said election as follows:

Shall the measure creating a special parcel tax to fund grants for performing arts organizations, art projects, art organization operational and programmatic expenses and capital projects, community festivals, and administrative costs, with oversight by the City's Civic Arts Commission, at a rate of $0.07 per square foot of improvements, estimated to generate approximately $6,300,000 annually and $84,800,000 over its twelve-year duration, be adopted?	YES NO

BE IT FURTHER RESOLVED that the text of the initiative ordinance be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits
A: Text of Ordinance

RECEIVED

DEC 18 2025

CITY OF BERKELEY
CITY CLERK DEPARTMENT

The people of the City of Berkeley do ordain as follows:

SECTION 1. TITLE.

This Ordinance may be cited as the "2026 Berkeley Arts and Creative Economy Rescue and Sustainability Ballot Measure."

Section 7.30.010. Title.

This Chapter shall be known and may be cited as, the "2026 Berkeley Arts and Creative Economy Rescue and Sustainability Ballot Measure" (hereinafter, the "Ordinance").

Section 7.30.020. Necessity of Parcel Tax.

The People of the City of Berkeley have determined:

(A) Arts and culture are a critical part of what makes Berkeley a special place to live. Berkeley has long been a nationally recognized cultural capital—home to a diverse, vibrant, and historically significant arts community. With over 150 nonprofit arts and culture organizations across theater, music, opera, dance, visual arts, film, festivals, literary arts, and arts education, Berkeley's identity as a progressive, creative, and inclusive city is inseparable from its artistic ecosystem. A Berkeley without the arts isn't truly Berkeley.

(B) Berkeley's creative economy employs thousands of people and makes our downtown and neighborhoods more vibrant. Our arts organizations help increase property values, attract new businesses and tourism, and bring patrons downtown and to commercial corridors to support our restaurants, hotels, and other businesses. Supporting the arts means a stronger local economy and better quality of life for all of us.

(C) Every dollar invested in the arts returns dividends to the City. Performing arts venues are primary and secondary sources of revenue and job generation. Studies show that each ticket purchased for a local arts performance generates an estimated $14–$16 in additional economic activity for surrounding businesses. Arts organizations provide workforce development, internships, and lifelong learning opportunities, all while fostering community cohesion and civic pride.

(D) The COVID-19 pandemic dealt a devastating blow to the arts and culture sector in Berkeley. Local arts organizations continue to struggle with rebuilding audience attendance post-pandemic, rising labor and production costs, and funders' shifting philanthropic priorities. Despite creative adaptations and deep cuts, many Berkeley institutions are operating at unsustainable deficits. Multiple beloved Berkeley theaters have closed already and more could follow. The damage to the arts and cultural infrastructure of Berkeley is not only ongoing but accelerating. We must support our arts organizations and preserve our City's artistic and cultural legacy.

(E) Berkeley arts institutions provide social cohesion to a community, valuable youth educational opportunities, free public performances and events, and discounts for residents and workers. This Ordinance will help protect these community benefits and allow arts organizations to put on even more public festivals, events, and performances.

(F) Public investment is urgently needed to preserve and revitalize Berkeley's arts and cultural sector. A dedicated, long-term funding stream is necessary to ensure the survival and resurgence of our arts institutions.

(G) Performing arts organizations are particularly vulnerable due to their inability to cover costs through ticket sales alone, as well as the slow, erratic return of in-person audiences post-COVID. Without immediate and sustained assistance, many of Berkeley's treasured arts organizations will not survive, putting Berkeley's civic identity, creative economy, and national reputation at risk.

(H) Berkeley's artistic sector fosters diversity, equity, inclusion, and belonging. Local artists and organizations provide cultural programming that reflects and uplifts the voices of historically marginalized communities. Continued investment will ensure access to arts education for youth, platforms for BIPOC and LGBTQIA+ artists, and space for intergenerational storytelling and cross-cultural dialogue.

(I) Local governments must now lead in protecting freedom of expression and the future of the arts. In an era of escalating federal disinvestment in arts and culture and attacks on artistic freedom, cities like Berkeley must act decisively to defend our values. This Ordinance affirms our City's belief that arts and culture are not expendable luxuries, but essential public goods worthy of bold investment.

(J) This Ordinance is a necessary act of rescue, resilience, and renewal ensuring that the cultural heartbeat of Berkeley not only survives, but thrives. We must preserve our City's theater, music, and dance venues for our children, adults, and seniors to maintain Berkeley as an educational and cultural destination for generations to come.

(K) The voters wish to empower the Civic Arts Commission and the City Council to issue regulations consistent with this Ordinance which fulfill and further the purpose and intent of this Ordinance.

Section 7.30.030. Definitions. [RESERVED]

Section 7.30.040. Authority.

This Ordinance is enacted in accordance with the authority granted to charter cities by Article XI section 5 of the California Constitution and Government Code section 50075. The parcel tax authorized herein is based on use rather than ownership of the property, and is not an ad valorem property tax. The People of the City of Berkeley declare their intent that this citizens initiative be enacted, and the parcel tax be collected if this Ordinance is approved by a simple majority of voters pursuant to California Cannabis Coalition v. City of Upland (2017) 3 Cal.5th 924, City of Fresno v. Fresno Building Healthy Communities (2020) 59 Cal.App.5th 220, and Jobs & Housing Coalition v. Oakland (2021) 73 Cal.App.5th 505. To the extent that the California Constitution or state law is amended on or after the date that this Ordinance is passed by voters to change or create additional voting requirements in order to implement or to continue to implement this Ordinance, the People of the City of Berkeley declare their intent that such amendments should be applied prospectively only and not apply to, or in any way affect, this parcel tax or this Ordinance.

Section 7.30.050. Municipal Affairs.

The People of the City of Berkeley hereby declare that providing additional funding for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations, individual artists, and cultural and arts festivals in the City of Berkeley through a parcel tax for the purposes set forth in this Ordinance constitutes a municipal affair. The People hereby further declare their desire for this Ordinance to coexist with any similar tax measures adopted at the City, County of Alameda, or state levels.

Section 7.30.060. Purpose.

The parcel tax imposed under this Ordinance is solely for the purpose of raising revenue to provide additional funding for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations, individual artists, and cultural and arts festivals in the City of Berkeley. The People hereby further declare that this additional funding is meant to supplement, not replace, existing funding from the City that is currently spent for the same purposes supported by this Ordinance. Because the proceeds of the parcel tax will be deposited into one or more special funds restricted for the expenditures specified herein, the tax is a special tax.

Section 7.30.070. Special Fund.

All funds collected by the City from the special tax imposed by this Ordinance shall be deposited into one or more special funds in the City treasury and appropriated and expended only for the purposes and uses authorized by this Ordinance. This fund, or these funds, shall be known as the "Arts Vitality Fund" or "Fund."

Section 7.30.080. Use of Proceeds.

The proceeds of this special tax shall be placed in the Arts Vitality Fund that must be used only for the purpose of providing additional funding for grant programs for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations, individual artists, and cultural and arts festivals in the City of Berkeley, which are specified in Sections 7.30.090, 7.30.100, 7.30.110, 7.30.120, & 7.30.130. The purpose of the special fund is to provide additional funding for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations, individual artists, and cultural and arts festivals in the City of Berkeley.

Section 7.30.090. Use of Proceeds. Performing Arts Rescue & Sustainability.

(A) Seventy-Five percent (75.00%) of all annual proceeds from the special tax that are deposited into the Arts Vitality Fund shall be distributed through a new Civic Arts grant program for performing arts rescue and sustainability, as follows:

(B) Purpose: Supporting the growth and stability of Berkeley's performing arts community through funding the operational and programmatic expenses of nonprofit Performing Arts Organizations.

(C) Grant Awards: Grants shall be awarded on a two (2) year or more cycle (the Grant Activity Period). If awarded, Awarded Grant Applicants receive the award for the fiscal year, and will receive the same award each following year for the duration of the Grant Activity Period. A two-year or longer cycle is used to reduce the amount of administrative time and effort required to apply for City funding.

(D) Grant Awards Eligibility:

(1) Grant Applicants must have an official business address in the City of Berkeley and must, for at least three consecutive years of operation in the City of Berkeley immediately preceding the application, be a "Performing Arts Organization," which is defined as an entity with the primary purpose of developing, producing, presenting, and/or training for live performances and providing live performances with regularity for the public involving artists like actors, dancers, musicians, bands, and other performers within the City of Berkeley. The entity's eligibility and purpose are assessed and verified by Civic Arts staff using the organization's website, mission, core values, past activities and programs, proposed future activities and programs, annual tax return filings, and IRS National Taxonomy of Exempt Entities codes (NTEE).

(2) Grant Applicants must also be either (1) a nonprofit 501(c)(3) organization (or any California state equivalent designation) with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board or (2) an entity that is nonprofit in nature and uses a fiscal sponsor, which must be a nonprofit 501(c)(3) organization (or any California state equivalent designation) with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board.

(3) Grant Applicants applying for or receiving award amounts in excess of one hundred thousand dollars ($100,000) must provide community benefits, which may include, but are not limited to: free public performances or events; Berkeley resident or employee discounts; performances or educational programming in schools for youth; after school programs for youth; or free or discounted community use of facilities by Berkeley residents or entities.

(E) Grant Awards Ineligibility. The following are ineligible to apply for or be awarded a grant:

(1) City of Berkeley, County of Alameda, or State of California government departments or units, including any University of California Berkeley Affiliated Entities. University of California Berkeley Affiliated Entity means any legal entity, subsidiary, department, unit, or program that is directly or indirectly controlled by or under common control with the University of California Berkeley, including but not limited to Arts Organizations, Performing Arts Organizations, or other organizations established to advance the mission of the University. For purposes of this definition, "control" means the power, whether direct or indirect, to direct the management and policies of such entity, whether through ownership, governance, representation on its governing board, contractual arrangements, or otherwise.

(2) Colleges or universities.

(3) For-profit businesses or sole proprietorships.

(4) Individual artists.

(5) Nonprofit organizations which are not Performing Arts Organizations, such as social service nonprofits, religious institutions, etc.

(6) Public or private school districts, not including Independent Schools that are Performing Arts Organizations.

(F) Grant Amount.

(1) All Grant Applicants may request up to a specified percentage of their Annual Operating Expenses for each year of the Grant Activity Period.

(2) For Performing Arts Organizations with Annual Operating Expenses greater than or equal to one million dollars ($1,000,000) per fiscal year, the grant request may be up to ten percent (10.00%) of its Annual Operating Expenses. In the event the Annual Operating Expenses of a Grant Applicant exceeds twelve million five hundred thousand dollars ($12,500,000), the Annual Operating Expenses shall be capped at twelve million five hundred thousand dollars ($12,500,000) for purposes of this calculation.

(3) For Performing Arts Organizations with Annual Operating Expenses that are less than one million dollars ($1,000,000) per fiscal year, the grant request may be up to twelve-and-one-half percent (12.50%) of its Annual Operating Expenses.

(4) Annual Operating Expenses shall mean the average annual operating expenses over the Grant Applicant's previous three fiscal years.

(5) Awarded Grant Applicants will receive annual payments over each Grant Activity Period.

(6) Award amounts and the number of awards will be determined by the number of applications received, the amounts requested, and final grant application evaluation scores as determined by the Grant Review Panel. In no event shall an Awarded Grant Applicant receive less than fifty percent (50.00%) of the requested grant application amount. In the event that the available grant funds for this program are inadequate to meet the aforementioned minimum award, the applications of organizations awarded grants in the first grantmaking cycle of this grant program shall be prioritized.

(7) Final award amounts are contingent upon the City Council's approval of the fiscal year budget, and the Civic Arts grant program allocations for each year.

(G) Permissible Funding Use. The following are permissible uses of funds:

(1) Talent, artist, and contractor fees, wages, or stipends.

(2) Equipment rentals.

(3) Professional development and training.

(4) Program supplies and materials.

(5) Staff salaries.

(6) Rent and utilities.

(7) Venue and permit fees.

(H) Impermissible Funding Use. The following are impermissible uses of funds:

(1) Activities that are primarily for university-enrolled or college-enrolled students.

(2) Capital improvement projects.

(3) Deficit or debt reduction.

(4) Equipment purchases.

(5) Expenses incurred outside of the Grant Activity Period.

(6) Expenses in connection with fundraising.

(7) Political advocacy or lobbying.

(8) Projects with religious purposes.

(9) Start-up costs for new organizations or businesses.

(10) Trusts, endowments, or cash reserves.

(I) Funding Requirements. Funds must be used for purposes consistent with this Ordinance within the Grant Activity Period.

Section 7.30.100. Use of Proceeds. Civic Arts Grants for Arts Organizations and Individual Artist Projects.

(A) Five percent (5.00%) of all annual proceeds from the special tax that are deposited into the Arts Vitality Fund shall be distributed through grant programs for Arts Organizations and Individual Artist Projects as follows:

(B) Purpose: Supporting the growth and stability of Berkeley's arts community through funding individual artists living in Berkeley with project-based funding and through funding the operational and programing expenses of nonprofit arts organizations.

(C) Grant Awards: Grants shall be awarded on a one (1) year cycle for Individual Artist Grant Applicants (the Individual Artist Grant Activity Period) and a two (2) year or more cycle for Organization Grant Applicants (the Organization Grant Activity Period). If awarded, Organization Grant Applicants receive their award for the fiscal year, and will receive the same award each following year during the Organization Grant Activity Period. A two-year or longer cycle is used for Organization Grant Applicants to reduce the amount of administrative time and effort required to apply for City funding.

(D) Grant Awards Eligibility: Individual Artist Grant Applicants must qualify for eligibility under subsection (D)(1) and Organization Grant Applicants must qualify for eligibility under subsection (D)(2).

(1) Individual Artists. Individual Artist Grant Applicants must be an individual artist and not applying as a partnership, group, or collective; a resident of the City of Berkeley; an individual artist working in film and new media, multidisciplinary/interdisciplinary arts, social practice, visual arts, dance, folk and traditional arts, literary arts, music, or theater; and at least 18 years of age.

(2) Organizations. Organization Grant Applicants must have an official business address in the City of Berkeley and must be an "Arts Organization," which is defined as an entity with the primary purpose of providing arts, creative, or cultural programming or services within the City of Berkeley. The entity's purpose is assessed and verified by Civic Arts staff using the organization's website, mission, core values, past activities and programs, proposed future activities and programs, and IRS National Taxonomy of Exempt Entities codes (NTEE). Organization Grant Applicants must also be either (1) a nonprofit 501(c)(3) organization (or any California state equivalent designation) with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board or (2) an entity that is nonprofit in nature and uses a fiscal sponsor, which must be a nonprofit 501(c)(3) organization (or any California state equivalent designation) with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board.

(E) Grant Awards Ineligibility: Individual Artist Grant Applicants. The following individuals are ineligible to be awarded a grant:

(1) City of Berkeley employees employed at the time of the application or during any part of the Individual Artist Grant Activity Period.

(2) Full-time students enrolled at the time of the application or during any part of the Individual Artist Grant Activity Period.

(3) Any individual who has been awarded a grant during either of the previous two grant cycles (two fiscal years).

(4) Any individual who plans to produce a festival with the grant award.

(5) Individuals who do not live in the City of Berkeley.

(6) Organizational applicants (for example, festivals, nonprofit organizations, businesses, etc.).

(F) Grant Awards Ineligibility: Organization Grant Applicants. The following organizations are ineligible to be awarded a grant:

(1) City of Berkeley government department units.

(2) For-profit businesses or sole proprietorships.

(3) Any organization with an active grant award pursuant to Section 7.30.090 of this Ordinance.

(4) Nonprofit organizations which are not arts/cultural organizations such as social service nonprofits, religious institutions, etc.

(5) Public or private school districts, not including Independent Schools that are Performing Arts Organizations.

(G) Grant Amount.

(1) All Individual Artist Grant Applicants may request up to seven thousand five hundred dollars ($7,500) for project support during the Individual Artist Grant Activity Period.

(2) All Organizational Grant Applicants may request up to twenty-five thousand dollars ($25,000) for operating-related expenses for each year of the Organization Grant Activity Period (for example, $50,000 over two years).

(3) Awarded Organization Grant Applicants will receive annual payments over each Organization Grant Activity Period.

(4) Awarded Individual Artist Grant Applicants will receive one payment over a one-year Individual Artist Grant Activity Period.

(5) Award amounts and the number of awards will be determined by the number of applications received, the amounts requested, and final grant application evaluation scores as determined by the Grant Review Panel.

(6) Final award amounts are contingent upon the City Council's approval of the fiscal year budget, and the Civic Arts grant program allocations for each year.

(H) Permissible Funding Use: Individual Artist Grant Applicants. The following are permissible uses of funds for Awarded Individual Artist Grant Applicants:

(1) Artist fees.

(2) Equipment rentals.

(3) Stipends for collaborators.

(4) Supplies and materials needed for the project.

(5) Venue or studio fees.

(I) Permissible Funding Use: Organization Grant Applicants. The following are permissible uses of funds for Awarded Organization Grant Applicants:

(1) Talent, artist, and contractor fees, wages, or stipends.

(2) Equipment rentals.

(3) Professional development and training.

(4) Program supplies and materials.

(5) Staff salaries.

(6) Rent and utilities.

(7) Venue and permit fees.

(J) Impermissible Funding Use: Individual Artist Grant Applicants. The following are impermissible uses of funds by Awarded Individual Artist Grant Applicants:

(1) Expenses incurred outside of the Individual Artist Grant Activity Period.

(2) Joint projects funded by awards to two or more Individual Artist Grant Applicants.

(3) Political advocacy or lobbying.

(4) Project production and presentation of activities outside of the City of Berkeley.

(5) Projects for which the main intent is curation, archiving, or journalism.

(K) Impermissible Funding Use: Organization Grant Applicants. The following are impermissible uses of funds by Awarded Organization Grant Applicants:

(1) Activities in schools during in-school hours.

(2) Activities that are primarily for university-enrolled or college-enrolled students.

(3) Capital improvement projects.

(4) Deficit or debt reduction.

(5) Equipment purchases.

(6) Expenses incurred outside of the Organization Grant Activity Period.

(7) Expenses in connection with fundraising.

(8) Political advocacy or lobbying.

(9) Projects with religious purposes.

(10) Start-up costs for new organizations or businesses.

(11) Trusts, endowments, or cash reserves.

(L) Funding Requirements: Awarded Individual Artist Grant Applicants.

(1) All project components must be completed within the Individual Artist Grant Activity Period.

(2) Public presentation. A public presentation of the new artwork within the City of Berkeley is required. The presentation must engage a defined Berkeley audience or community in a meaningful way, as determined by the Civic Arts Commission.

(M) Funding Requirements: Awarded Organization Grant Applicants.

(1) Funds must be used for operating and programing expenses within each year of the Organization Grant Activity Period.

Section 7.30.110. Use of Proceeds. Capital Projects.

(A) Ten percent (10.00%) of all annual proceeds from the special tax that are deposited into the Arts Vitality Fund shall be distributed through a grant program for capital projects of nonprofit arts organizations.

(B) Purpose. Supporting long-term sustainability of the arts and culture sector by retaining and improving arts organizations' spaces in the City of Berkeley. Capital projects and asset acquisitions funded by the Arts Vitality Fund are intended to assist nonprofit Arts Organizations in Berkeley. A capital project is a project that helps maintain, improve, or add to the organization's infrastructure. It results in an acquisition of a new asset or new construction, improvements, expansion, renovation, rehabilitation, repairs, or replacement of an existing facility or other infrastructure assets located in the City of Berkeley. Capital projects are expected to result in a long-term useful life and long-term benefit.

(C) Grant Awards. Grants shall be awarded on a project-by-project basis.

(D) Grant Awards Eligibility: Grant Applicants must be all of the following:

(1) Grant Applicant's official business address is located in the City of Berkeley.

(2) Grant Applicant is a nonprofit 501(c)(3) organization (or any California state equivalent designation) with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board.

(3) Grant Applicant is an Arts Organization, which is an entity with a primary purpose of providing arts, creative, or cultural programming or services and whose purpose is assessed and verified by Civic Arts Commission staff using the applicant organization's website, mission, core activities, and IRS National Taxonomy of Exempt Entities (NTEE) codes.

(E) Grant Awards Ineligibility. The following are ineligible to apply for, or be awarded, a grant:

(1) City of Berkeley government departments or units.

(2) Colleges or universities.

(3) Fiscally-sponsored organizations.

(4) For-profit businesses or sole proprietorships.

(5) Individual artists.

(6) Public or private school districts, not including Independent Schools that are Performing Arts Organizations.

(7) Grant Amount. The capital projects program grant is up to two hundred thousand dollars ($200,000) per project. A project budget is required with the application. Final award amounts are contingent upon the City Council's approval of the fiscal year budget, and the Civic Arts grant program allocations for each year; amounts are subject to change.

(F) Permissible Funding Use. The following are permissible uses of funds:

(1) Assistive technology.

(2) Contractor and permit fees.

(3) Construction and repairs.

(4) Equipment.

(5) Established capital campaigns where Civic Arts Commission funding would be the final amount needed.

(6) Lighting.

(7) Heating, ventilation, and air conditioning (HVAC).

(8) Project planning, assessment consultancies, or feasibility studies.

(9) Project management salaries.

(G) Impermissible Funding Use. The following are impermissible uses of funds:

(1) Administrative or other organizational costs unrelated to the capital project.

(2) Capital projects located on public or private school grounds, not including Independent Schools that are Performing Arts Organizations.

(3) Capital projects located on college or university campuses that are not accessible to the general public and do not primarily function as locations for Arts Organizations.

(4) Locations outside the City of Berkeley.

(5) Multiple projects proposed within the same grant application.

(6) Fundraising expenses.

(7) Regular programming.

(8) Political advocacy or lobbying.

(9) Spaces not available or accessible to the general public.

(10) Start-up costs for creating new organizations or businesses.

(11) Trusts, endowments, or cash reserves.

(H) Project Requirements.

(1) Documentation of the project process and completion.

(2) Project must be completed within the timeframe specified within the grant agreement or any amendments thereto.

(3) Project must be completed within the City of Berkeley.

(4) Project must meet Americans with Disabilities Act (ADA) standards and any other building requirements pursuant to federal, state, or local law.

(5) For projects involving construction, proof of building ownership or long-term lease of building.

Section 7.30.120. Use of Proceeds. Community Festivals.

(A) Five percent (5.00%) of all annual proceeds from the special tax that are deposited into the Arts Vitality Fund shall be distributed through a grant program for community festival grants.

(B) Purpose. Supporting festivals and special events in Berkeley. A festival or special event is defined as a public event that celebrates a community, neighborhood, historically significant day, or shared cultural interest, and may include art fairs, celebrations of cultural heritage, and other events that occur over a limited time period.

(C) Grant Awards. Grants shall be awarded on an annual basis for festivals that are single or multi-day events that generally occur one time per year. These grants will not fund ongoing programming.

(D) Grant Awards Eligibility: Grant Applicants must be at least one of the following:

(1) Nonprofit 501(c)(3) (or any California state equivalent designation), 501(c)(4), or 501(c)(6) organization with tax-exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board.

(2) An organizational entity that is nonprofit in nature (for example, artist collectives and guilds) and using a Fiscal Sponsor, which must be a 501(c)(3) (or any California state equivalent designation) with tax exempt status granted by the Internal Revenue Service and/or the California Franchise Tax Board.

(E) Grant Awards Ineligibility. The following are ineligible to apply for, or be awarded, a grant:

(1) City of Berkeley government departments or units.

(2) For-profit businesses or sole proprietorships.

(3) Individual artists.

(4) Grant Amount. The community festival grant is up to twenty-five thousand dollars ($25,000) per festival for festival-related expenses. Final award amounts are contingent upon the City Council's approval of the fiscal year budget, and the Civic Arts grant program allocations for each year. A budget is required with the application.

(F) Permissible Funding Use. The following are permissible uses of funds:

(1) Talent, artist, and performer fees, wages, or stipends.

(2) Equipment rentals.

(3) Production or technical staff contractors.

(4) Supplies and materials needed for the festival or event.

(5) Venue and permit fees.

(6) Sanitation and security costs.

(G) Impermissible Funding Use. The following are impermissible uses of funds:

(1) Activities not available to the general public.

(2) Activities occurring outside the City of Berkeley.

(3) Administrative or other organizational costs unrelated to production of the event.

(4) Capital improvement projects.

(5) Events in schools during school hours.

(6) Events on university campuses that are primarily for enrolled students.

(7) Events where fundraising is the primary purpose.

(8) Events where sporting is the primary purpose (e.g., sporting tournaments, marathons, etc.).

(9) Ongoing programming (e.g., regular programs or events that occur throughout the year and would not be considered a festival or special event).

(10) Political advocacy or lobbying.

(H) Festival Requirements.

(1) Festival must have a free component.

(2) Festival must be open and accessible to the public.

(3) Festival must take place in the City of Berkeley.

(4) Festival must take place within one year of the grant award.

Section 7.30.130. Use of Proceeds. Administrative Overhead.

Five percent (5.00%) of all annual proceeds from the special tax that are deposited into the Arts Vitality Fund shall be used to cover administrative costs incurred to effectuate this Ordinance.

Section 7.30.140. Imposition of Parcel Tax.

(A) A special tax for the purpose of providing additional funding for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations,

individual artists, and cultural and arts festivals in the City of Berkeley is hereby authorized to be imposed on use and occupancy within the City of Berkeley as set forth below.

(B) There is hereby imposed a special non-ad valorem parcel tax on all Owners of Parcels in the City of Berkeley for the privilege of using municipal services that constitute municipal affairs pursuant to Section 7.30.050 and the availability of such services that constitute municipal affairs pursuant to Section 7.30.050. The tax imposed by this Ordinance shall be assessed on the Owner unless the Owner is by law exempt from taxation, in which case, the tax imposed shall be assessed to the holder of any Possessory Interest in such Parcel, unless the holder is also by law exempt from taxation. The tax is imposed as of July 1 of each year on the person who owned the Parcel on that Date. The tax shall be collected at the same time, by the same officials, and pursuant to the same procedures as the one percent tax imposed pursuant to Article XIIIA of the California Constitution.

(C) The tax hereby imposed shall be set as follows:

(1) For all dwelling units, the tax is imposed at a rate of $0.07 per square foot of improvements.

(2) For all other property, including parking structures, the tax is imposed at a rate of $0.07 per square foot of improvements.

(D) The tax enacted by this Ordinance shall be imposed and levied for a period of twelve (12) years, commencing on January 1, 2027. The City shall place delinquencies on subsequent tax bills.

Section 7.30.150. Exemptions.

(A) Senior Exemption. An owner and occupier of any residential property that (1) is 65 years of age or older and (2) has a combined household income, from all sources from the previous calendar year, that is at or below the income level qualifying as "low income" for a household of such size as defined by the U.S. Department of Housing and Urban Development (HUD) annual survey of income limits for the public housing and Section 8 Programs for such fiscal year is exempt from this special tax. Owners must apply for the exemption provided for in this section annually by petition to the Director of Finance who shall provide the manner and time for so doing. Such petitions will be on forms provided by the Director of Finance and shall include federal tax returns and W-2 forms or any other documentation and information needed to determine eligibility for this exemption.

(B) Very Low Income Household Exemption. An owner and occupier of any residential property who (1) resides in such unit and (2) has a combined household income, from all sources from the previous fiscal year, that is at or below the income level qualifying as "very low income" for a household of such size as defined by the U.S. Department of Housing and Urban Development (HUD) annual survey of income limits for the public housing and Section 8 Programs for such fiscal year is exempt from this special tax. Owners must apply for the exemption provided for in this section annually by petition to the Director of Finance who shall provide the manner and time for so doing. Such petitions will be on forms provided by the Director

of Finance and include federal tax returns and W-2 forms and any other information needed to determine eligibility for this exemption.

(C) Tax Exempt Religious or Educational Organizations. Real property that is owned by a religious organization or school that California law exempts from taxes is also exempt from this special tax. To qualify for this exemption, each religious organization or school that seeks an exemption must submit such information required to determine eligibility to the Director of Finance.

(D) Affordable Housing Exemption. Affordable housing that has a regulatory agreement with a government agency restricting the rent and limiting tenancy to qualifying households not exceeding specified incomes for at least 60 percent of the units and transitional housing for individuals and families transitioning out of homelessness are exempt from this special tax. Owners must apply for the exemption provided for in this section annually by petition to the Director of Finance who shall provide the manner and time for so doing. Such petitions will be on forms provided by the Director of Finance and include federal tax returns and W-2 forms and any other information needed to determine eligibility for this exemption.

Section 7.30.160. Collection of Tax.

The special tax imposed by this Ordinance shall be due in the same manner, on the same dates, and subject to the same penalties and interest as established by law for other charges and taxes fixed and collected by the County of Alameda on behalf of the City of Berkeley. The special tax imposed by this Chapter, together with all penalties and interest thereon, shall constitute a lien upon the parcel upon which it is levied until it has been paid, and shall constitute a personal obligation of the owners of the parcel on the date the tax is due.

Section 7.30.170. Collection of Unpaid Taxes.

The amount of any tax, penalty, and interest imposed by this Ordinance will be deemed a debt to the City. Any person that owes money under the provisions of this Ordinance will be liable to an action brought in the name of the City for the recovery of such amount. The City shall be entitled to reasonable attorneys' fees and its costs of suit in any such action.

Section 7.30.180. Accountability Measures.

In accordance with the requirements of California Government Code section 50075.1 and 50075.3, the following accountability measures shall apply to the special tax:

(A) One or more separate, special accounts, referred to as the "Arts Vitality Fund" or "Fund," shall be created, into which the proceeds of the special tax, including penalties and interest earned on such proceeds, must be deposited.

(B) The specific purpose of the special tax is for the purpose of raising revenue to provide additional funding for Berkeley nonprofit performing arts organizations presenting live performances for the public, arts organizations, individual artists, and cultural and arts festivals in the City of Berkeley. The proceeds of the special tax shall be applied only to those specific purposes.

(C) The proceeds of the special tax must be deposited in one or more special accounts that will be created and maintained by the City. No later than January 1 of each year, commencing with January 1, 2028, the Finance Director of the City must file an annual report with the City Council that provides (1) the amount of special tax funds collected and expended, and (2) the status of any project required or authorized to be funded pursuant to this Ordinance. These annual reports must cover the fiscal year most recently ended.

Section 7.30.190 Additional Accountability Measures, Role of and Oversight by Civic Arts Commission.

(A) The Civic Arts Commission shall adopt regulations for recommendation to the City Council for approval by resolution which effectuate the purposes and intent of this Ordinance.

(B) The Civic Arts Commission shall be charged with developing application procedures and with reviewing and approving applications for grants.

(C) The Civic Arts Commission shall have the responsibility for citizen oversight of this Ordinance and shall be charged with the following:

(1) Annual review of a required audit produced by an independent or elected auditor hired by the City utilizing funds reserved for the administration of this Ordinance. The annual audit shall review all of the money issued as a grant award to ensure that the funds have been spent in a manner consistent with this Ordinance and any Administrative Regulations adopted by Council for the implementation of this Ordinance.

(2) Assembling one or more Grant Review Panels to score applications in accordance with the review criteria. A Grant Review Panel shall be comprised of individuals located in the greater Bay Area with diverse backgrounds and experiences. Individuals shall apply to be included in the panelist pool through a process established by the Civic Arts Commission. The Civic Arts Commission shall approve the eligibility of panelists that can be selected to serve on a panel. Panelists shall be knowledgeable and/or experienced about the performing arts and cultural sector as it pertains to nonprofit organizations, practicing artists, cultural events, and cultural equity. Each grant application shall be reviewed by a panel comprised of at least three panelists. Civic Arts staff shall ensure that the makeup of panels is representative of Berkeley's demographics and the artistic disciplines evident in the grant application pool. The Grant Review Panel meeting shall be public. Applicants may attend the Grant Review Panel meeting and shall be given an opportunity to address the panel. Civic Arts staff shall create funding scenarios based on the amount of available funding, number of applications, and panelist scores.

(3) The recommendations of the Grant Review Panel(s) and the funding scenarios shall be reviewed by the Grants Subcommittee, which shall be comprised of at least three (3) members of the Civic Arts Commission, and either approved, rejected, or modified.

(4) Once a recommendation is approved by the Grants Subcommittee, the recommendation shall be forwarded to the full Civic Arts Commission for approval, rejection, or modification.

(5) All reviews of panel recommendations and grant awards by the Grants Subcommittee and the Civic Arts Commission shall occur at public meetings.

(6) Upon approval by the full Civic Arts Commission, grant awards shall be reviewed and approved by the City Council or referred back to the Civic Arts Commission for further review and/or modification.

Section 7.30.200. Amendment.

The City Council may not amend or repeal any of the provisions of this Ordinance, and may not extend or increase the special tax unless it is submitted to, and approved by, a majority of the voters of the City of Berkeley. Notwithstanding the forgoing, the City Council may amend this Ordinance provided that the changes further the purposes of the Ordinance and that at least a majority of City Councilmembers vote in favor of such changes. The people of the City of Berkeley affirm that actions not constituting an amendment or repeal of any provision of this Ordinance, or an expansion, extension, or increase of the rate of the special tax, include but are not limited to:

(A) An action that interprets or clarifies (1) the methodology of applying or calculating the special tax or (2) any definition applicable to the special tax, so long as the interpretation or clarification (even if contrary to some prior interpretation or clarification) is consistent with this Ordinance;

(B) Fix any technical errors within this Ordinance which may thwart the ability of the City to levy and collect this tax or to carry out the Ordinance's purpose;

(C) The collection of the special tax even if the City had, for some period of time, failed to collect the special tax.

(D) Pursuant to Section 7.30.190(A), the City Council's adoption of regulations recommended by the Civic Arts Commission which effectuate the purposes and intent of this Ordinance.

SECTION 2. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

This Ordinance is not a "project" under the California Environmental Quality Act, Public Resources Code section 21000 et seq. (CEQA). CEQA's regulations define "project" to exclude the "submission of proposals to a vote of the people…of a particular community that does not involve a public agency sponsored initiative," and the "creation of government funding mechanisms." (2 Cal. Code of Regs. section 15378(b)(2)-(4).)

SECTION 3. SEVERABILITY.

If any provision of this Ordinance, or any section, phrase, or word thereof, or the applicability of any provision, section, part, phrase, or word to any person or circumstances, including any exemption to the special tax or defined term, is for any reason held to be invalid or unconstitutional, the remaining provisions, sections, parts, phrases, or words shall not be affected,

but shall remain in full force and effect, and to this end the provisions, sections, parts, phrases, and words of this Ordinance are severable.

The voters hereby declare that this Ordinance, and each section, provision, part, phrase, and word, including any exemption to the special tax or defined term, would have been adopted irrespective of whether any one or more provisions, sections, parts, phrases, or words are found to be invalid or unconstitutional.

SECTION 4. LEGAL DEFENSE.

The People of the City of Berkeley desire that this Ordinance, if approved by the voters and thereafter challenged in court, be defended by the City. The People, by approving this Ordinance, hereby declare that the proponent(s) of this Ordinance have a direct and personal stake in defending this Ordinance from constitutional or statutory challenges to the Ordinance's validity or implementation. In the event that the City fails to defend this Ordinance, or the City fails to appeal an adverse judgment against the constitutionality, statutory permissibility, or implementation of this Ordinance, in whole or in part, in any court of law, the Ordinance's proponents shall be entitled to assert their direct personal stake by defending the Ordinance's validity and implementation in any court of law and shall be empowered by the People through this Ordinance to act as agents of the People. The City shall indemnify the proponents for reasonable expenses and any losses incurred by the proponents, as agents, in defending the validity and/or implementation of the challenged Ordinance. The rate of indemnification shall be no more than the amount it would cost the City to perform the defense itself.

SECTION 5. CONFLICTING MEASURES.

If this Ordinance and one or more conflicting measures appear on the same City ballot, the provisions of the measure that receives the greater number of affirmative votes will prevail in its entirety, and the other measure or measures shall be null and void.

If this Ordinance is approved by the voters but superseded by law by another conflicting measure approved by the voters at the same election, and the conflicting ballot measure is later held to be invalid, this Ordinance shall be self-executing and will be given full force and effect.

SECTION 6. LIBERAL CONSTRUCTION.

This Ordinance shall be liberally construed to effectuate its purposes.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall become effective upon its approval by a simple majority of electors voting on this Ordinance.

BERKELEY CITY CLERK CERTIFICATE OF PETITION

I, Mark Numainville, City Clerk of the City of Berkeley, California, do hereby certify the following:

An Initiative Petition entitled: "Initiative Ordinance Creating a Parcel Tax to Fund Arts Institutions and Programs" was filed with the Berkeley City Clerk on May 4, 2026 within the statutory time limit and forwarded to the office of the Alameda County Registrar of Voters for verification; and

The petition contained **4,607** unverified signatures; and

Pursuant to the Charter of the City of Berkeley, in order to be sufficient, the petition must have been signed by at least **2,625** qualified registered voters of the City of Berkeley, the number being equal to 5% of the total votes cast for all candidates for mayor in the last general municipal election; and

I have examined or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

I have determined that the petition contained a valid signature rate of **169%** based on a random sample of the signatures as performed and certified by the Registrar of Voters in Exhibit A attached herewith; and

This number meets or exceeds the valid signature rate needed to qualify the initiative; therefore

The petition is found to be sufficient to require the City Council of the City of Berkeley to take appropriate action specified under Article XIII of the Berkeley City Charter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 8th day of June, 2026.

Mark Numainville
City Clerk
City of Berkeley

Exhibit A

REGISTRAR OF VOTERS CERTIFICATE TO PETITION

I, **Cynthia Cornejo,** Interim, Registrar of Voters for the County of Alameda, State of California, hereby certify that:
an Initiative Entitled: Initiative Ordinance Creating a Parcel Tax to Fund Arts Institutions and Programs was filed with the Berkeley City Clerk within the statutory time limit and forwarded to this office for verification on May 4, 2026; and

The petition contained **4,607** unverified signatures; and

In accordance with Article XIII of the Berkeley City Charter, it was determined that the total number of votes cast for Mayor in Berkeley at the November 2024 General Election was 52,493. The requisite number of signatures required to qualify this initiative is 5% of 52,493 or **2,625.**

I have examined, or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9114 and 9115; and

Have determined that the petition contained **489** valid signatures of qualified registered voters in the City of Berkeley based on the random sample examination set forth in section 9115 and the formula prescribed by the California Secretary of State; and

That this number represents **169%** of the total number of signatures needed to qualify the initiative therefore;

The petition is found to be sufficient to require the City Council of the City of Berkeley to take the appropriate action specified in the California Elections Code.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this **19th** day of **May 2026.**

DocuSigned by:
Cynthia Cornejo
6E5C0617DC3444D...

Cynthia Cornejo
Interim, Registrar of Voters
County of Alameda
State of California

03

Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Initiative Petition – Ordinance Creating a Parcel Tax to Fund a Public Bank

RECOMMENDATION

1) Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.

2) If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impacts related to the recommended action.

CURRENT SITUATION AND ITS EFFECTS

An initiative petition titled "Initiative Ordinance Creating a Parcel Tax to Fund a Public Bank" was filed with the City Clerk on May 7, 2026. The proponents of this petition submitted 5,764 prima facie signatures.

Under Berkeley City Charter Article XIII, the number of valid signatures required for a sufficient petition is at least 5% of the votes for all candidates for Mayor in the previous mayoral election. In November 2024, there were 52,493 votes for candidates for Mayor, with 5% of that number equaling 2,625.

The Alameda County Registrar of Voters verified the signatures based on the random sample examination set forth in accordance with California Elections Code Sections 9211 and 9115. The petition was certified by the Registrar of Voters as being sufficient on May 20, 2026.

Additionally, with respect to who can author arguments for measures placed on the ballot by petition, Elections Code Section 9282 provides the City Council may authorize the Council as a whole, or members of the Council, to submit an argument against the initiative ordinance. The Council may also decline to designate an author to file an argument against the measure.

BACKGROUND

Pursuant to the City Charter, Article XIII, Section 92, once a petition has been found to have a sufficient amount of signatures, the City Council must consider whether to a) Adopt said ordinance without alteration within twenty days after the attachment of the City Clerk's certificate of sufficiency to the accompanying petition (subject to a referendary vote, under the provision of Article XIV of this Charter); or b) Submit the ordinance to the voters of the City of Berkeley at the next general election. However, since this initiative imposes a tax, if must be placed on the ballot and cannot be adopted by the Council.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The proposed action is mandated by state codes and the provisions of the City Charter.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. Resolution
   Exhibit A: Full Text of Measure
2. City Clerk's Certificate of Sufficiency

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

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE CREATING A PARCEL TAX TO FUND A PUBLIC BANK FOR THE NOVEMBER 3, 2026 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2026 General Municipal Election, an Initiative Ordinance Creating a Parcel Tax to Fund a Public Bank; and

WHEREAS, certain actions are required in connection with said election; and

WHEREAS, through Resolution No. 72,236-N.S. adopted on April 21, 2026, the Council has requested that the Alameda County Board of Supervisors consolidate the General Municipal Election with the Presidential General Election; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that full text of the measure and the City Attorney's analysis shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the Registrar of Voters of Alameda County is requested to perform services in connection with said election at the request of the City Clerk.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed initiative measure shall appear and be printed upon the ballots to be used at said election as follows:

Shall the measure creating a special parcel tax to capitalize and support a public bank to fund investments in affordable housing, green energy/infrastructure and small businesses, at rates of $0.06/square foot of residential improvements and $0.09/square foot of non-residential improvements, estimated to generate approximately $9,200,000 the first year and $58,300,000 over its six-year duration, with funds subject to review, allocation and approval by the City Council and regular audits, be adopted?	YES NO

BE IT FURTHER RESOLVED that the text of the initiative ordinance be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits
A: Text of Ordinance

MEASURE TO BE SUBMITTED TO THE VOTERS AUTHORIZING THE CITY OF BERKELEY TO LEVY A PARCEL TAX TO FINANCE AFFORDABLE HOUSING, GREEN ENERGY/INFRASTRUCTURE, AND SMALL BUSINESSES THROUGH A PUBLIC BANK

AF The People of the city of Berkeley do ordain as follows:

Section 1. Title

Increasing long term investments for Affordable Housing, Green Energy, and Small Business through Public Banking Parcel Tax

Section 2. Findings

The People of the City of Berkeley find and declare as follows:

A. Berkeley faces overlapping challenges of high housing costs, climate vulnerability, a challenging small business environment, overreliance on big corporate banks that extract wealth from the community, and unreliable federal funding.

B. First, housing costs are too high in Berkeley, with more than 40% of long-term Berkeley tenants being rent burdened according to the City's 2022 Tenant Survey. Reducing housing costs can increase city residents' ability to live and thrive.

C. Second, climate change threatens Berkeley through rising sea levels, heatwaves, wildfires, and more. Transitioning to green energy can help reduce pollution, increase community resilience, and lower energy bills while also reducing climate threats.

D. Third, Berkeley's small businesses are struggling in part due to a lack of access to capital. Increasing their access to loans and financing can help them grow and thrive.

E. Fourth, big corporate banks prioritize shareholder profits, rather than Berkeley's needs. Big banks lend Berkeley's taxpayer dollars outside of our communities and against our values, including supporting fossil fuels, the war economy, and private prisons. Lending that prioritizes Berkeley's needs would include loans for affordable housing, green energy/infrastructure, and small businesses.

F. Fifth, 2025 saw the longest federal government shutdown in history and unprecedented cuts to federal funding including to UC Berkeley's research grants. A robust public banking structure builds local financial institutions and helps communities manage the demands of natural disasters, economic downturns, and veering winds of federal policy.

G. In the face of these challenges, Berkeley can use public dollars to make long-term investments in affordable housing, green energy/infrastructure, and small businesses.

H. While big corporate banks invest our public tax dollars outside of our community, a public bank can recirculate our money in our community to fund projects and build a stronger, more resilient, local community aligned to our values.

RECEIVED

JAN 20 2026

CITY OF BERKELEY
CITY CLERK DEPARTMENT

I. At a time when the federal government has made many sudden grant cancellations, a public bank can provide local resilience to changes in federal funding flows or from federal government shutdowns while building community wealth.

J. A special parcel tax within the City provides an equitable mechanism for funding capital investments in the City's future. An exemption from the tax for low-income homeowners helps ensure the cost of the measure is not a burden for residents on fixed or limited incomes. A split-roll tax under which commercial properties pay more than residential properties, as used in numerous prior parcel taxes, ensures equity in raising funds.

K. A public bank is a powerful tool for community development. Because banks create money in the process of lending, public banks can multiply the impact of every dollar invested, and increase community wealth.

L. A public bank will make Berkeley and the broader region a place where more families can afford to stay, more entrepreneurs can thrive, and more neighborhoods are resilient and full of opportunity.

Section 3. Code Amendment
A new Chapter 7.03 is hereby added to the Berkeley Municipal Code as follows:

Chapter 7.03
Increasing long term investments for Affordable Housing, Green Energy, and Small Business through Public Banking Parcel Tax

7.03.010 Special Tax - Purpose.
A. A special tax for the purpose of funding long term investments for affordable housing, green energy/infrastructure, and small businesses is hereby authorized to be imposed on all improvements in the City of Berkeley as more fully set forth in this Chapter. To accomplish this purpose, tax revenue collected by this measure will go into a special fund to capitalize and support a public bank (the "Bank") that includes Berkeley in its service area.

B. The City Council shall impose the tax authorized by this Chapter up to the rate, and subject to inflation adjustments, set forth in Section 7.03.020.

C. All funds received from the tax are subject to the review, allocation, and approval by the City Council, subject to the terms of this paragraph 7.03.010.

D. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used only for the purposes set forth in this Chapter.

E. Returns earned by the special fund shall be reinvested in the special fund and used only in furtherance of the purposes set forth in this Chapter.

F. If the Bank does not secure authorization to conduct business by or before June 30, 2033, the special fund may be used to offer loans which support affordable housing, green energy/ infrastructure, and/or small businesses until such authorization has been secured, consistent with this Chapter.

G. Proceeds of the tax may be used to pay or reimburse the City for actual, verifiable costs of City staff when they are performing work necessary to accomplish Section 7.03.010(F).

7.03.020 Tax Authorized - Tax Rate and Allocation - Adjustments for Inflation

A. The City Council is hereby authorized to impose and allocate a special tax as follows:

1) **Residential Rate:** For all dwelling units, the tax shall be imposed at the rate of up to $0.06 per square foot of improvements.
2) **Non-Residential Rate:** For all other property, the tax shall be imposed at the rate of up to $0.09 per square foot of improvements.

B. Annually in May, the City Council shall increase the previous year's rate by up to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor Statistics data. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

7.03.030 Duration and Renewal

A. This measure shall remain in place for 6 years from the effective date, unless extended by the voters.

7.03.040 Reporting and Accountability

A. The City Manager shall prepare and submit to the City Council an annual report of performance metrics, outcomes, and accomplishments that reflects progress of the Bank capitalization and charter. This report shall contain the amount of funds collected and expended.

B. All expenditures, and verification of progress towards the goals set forth in Section 7.03.010, shall be subject to an independent performance audit by the City Auditor, at least once every three years, to confirm that the tax expenditures and reports are accurate and consistent with the intent of this chapter.

7.03.050 Definitions

For the purposes of this chapter, the following terms shall be defined as set forth below:

A. A "public bank" (the "Bank") shall be a bank as defined in Section 57600 of the state Government Code, which was added to the Government Code in the California Public Banking Act adopted by the State of California in November 2019:

> "Public bank" means a corporation, organized under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) for the purpose of engaging in the commercial banking business or industrial banking business, that is wholly owned by a local agency, local agencies, or a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1) that is composed only of local agencies.

B, "Affordable housing" is defined as housing below 120% of AMI (Area Median Income), based on the City of Berkeley's most current data on income levels, housing costs, and housing availability.

C. "Green energy/infrastructure" is defined as improvements to residential, commercial, and/or public property, buildings and structures, designed to further net zero carbon and Fossil Fuel Free City commitments. This initiative includes but is not necessarily limited to energy savings in the built environment, community resilience, zero-carbon energy generation, electrified transportation and industry, sustainable materials management, and waste reduction.

D, "Small businesses" is defined as businesses (especially those run by minorities, women, and people of color) within the Bank's geographical lending area, including Berkeley, which meet any of the following criteria 1) growing but still too small to receive adequate support from traditional banks; 2) start-up support for entrepreneurs and businesses in early stages, 3) businesses whose accounts receivable are on longer terms and whose accounts payable are on shorter terms; 4) funds that specialize in employee ownership transitions; and 5) any other businesses which the Bank's management believes can grow and thrive with loan support that they cannot obtain from traditional banks.

7.03.060 Exemptions.

A. The tax imposed by this Chapter shall not apply to parcels and improvements exempt from taxation by the City pursuant to the laws or constitutions of the United States and the State of California.

B. The tax imposed by this Chapter shall not apply to any property owned by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute "very low-income," as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established

in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

C. Any person or entity claiming an exemption from the tax imposed by this Chapter shall file a verified statement of exemption on a form prescribed by the City Manager prior to June 30th of the first fiscal year for which the exemption is sought.

7.03.070 Duties and Authority of the City Manager.

It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter and to keep an accurate record thereof. The City Manager is charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter, including provisions for the re-examination and correction of returns and payments.

7.03.080 Collection with Property Tax - Penalties and Interest.

The special tax imposed by this Chapter shall be due in the same manner, on the same dates, and subject to the same penalties and interest as established by law for other charges and taxes fixed and collected by the County of Alameda on behalf of the City of Berkeley. The special tax imposed by this Chapter, together with all penalties and interest thereon, shall constitute a lien upon the parcel upon which it is levied until it has been paid, and shall constitute a personal obligation of the owners of the parcel on the date the tax is due.

7.03.090 Collection.

The amount of any tax, penalty, or interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any person owing money under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount. The City shall be entitled to reasonable attorneys' fees and its costs of suit in any such action.

7.03.100 Refunds.

Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in Chapter 7.20 of the Berkeley Municipal Code or any such successor chapter.

7.03.110 Savings clause - Severability.

The provisions of this chapter shall not apply to any person, association, corporation, entity, or property as to whom or which it is beyond the power of the City of Berkeley to impose the tax herein provided. If any sentence, clause, section, or part of this chapter, or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal, or invalid, such sentence, clause, section or part shall be severable and such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and

shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this chapter. It is hereby declared to be the intention of the City Council and the People of the City of Berkeley that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

7.03.120 Violation - Penalty.

Any person who fails to perform any duty or obligation imposed by this chapter shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code. The penalties provided in this section are in addition to the several remedies provided in this chapter.

Section 4. Increase appropriations limit.

Pursuant to California Constitution Article XIIIB, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each fiscal year during which the tax is in effect.

Section 5. Effective date.

The tax imposed by this Chapter shall be operative on January 1, 2027.

Section 6. Conflicting Ballot Measures

(a) In the event that this measure and another measure(s) relating to local taxes to fund any or all of the uses permitted in this measure are approved by a majority of the voters at the same election, and this measure receives a greater number of affirmative votes than any other such measure(s), this measure shall control in its entirety, and the other measure(s) shall be rendered void and without any legal effect. If this measure is approved by a majority of the voters but does not receive a greater number of affirmative votes than the other measure(s), this measure shall take effect to the extent permitted by law.

(b) If any provisions of this measure are superseded by the provisions of any other conflicting measure approved by the voters and receiving a greater number of affirmative votes at the same election, and the conflicting measure is subsequently held to be invalid, repealed, or terminated, the provisions of this measure shall be revived and shall have full force of law.

Section 7. Special Tax; Majority Vote Requirement. This Ordinance imposes a special tax for restricted purposes and is being placed on the ballot via signature petition. It shall be effective only if approved by a majority of the voters voting thereon.

BERKELEY CITY CLERK CERTIFICATE OF PETITION

I, Mark Numainville, City Clerk of the City of Berkeley, California, do hereby certify the following:

An Initiative Petition entitled: "Initiative Ordinance Creating a Parcel Tax to Fund a Public Bank" was filed with the Berkeley City Clerk on May 7, 2026 within the statutory time limit and forwarded to the office of the Alameda County Registrar of Voters for verification; and

The petition contained **5,893** unverified signatures; and

Pursuant to the Charter of the City of Berkeley, in order to be sufficient, the petition must have been signed by at least **2,625** qualified registered voters of the City of Berkeley, the number being equal to 5% of the total votes cast for all candidates for mayor in the last general municipal election; and

I have examined or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

I have determined that the petition contained a valid signature rate of **113.25%** based on a random sample of the signatures as performed and certified by the Registrar of Voters in Exhibit A attached herewith; and

This number meets or exceeds the valid signature rate needed to qualify the initiative; therefore

The petition is found to be sufficient to require the City Council of the City of Berkeley to take appropriate action specified under Article XIII of the Berkeley City Charter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 8th day of June, 2026.

Mark Numainville
City Clerk
City of Berkeley

Exhibit A

REGISTRAR OF VOTERS CERTIFICATE TO PETITION

I, **Cynthia Cornejo,** Interim, Registrar of Voters for the County of Alameda, State of California, hereby certify that:
an Initiative Entitled: Initiative Ordinance Creating a Parcel Tax to Fund A Parcel Tax to Fund a Public Bank was filed with the Berkeley City Clerk within the statutory time limit and forwarded to this office for verification on May 7, 2026; and

The petition contained **5,893** unverified signatures; and

In accordance with Article XIII of the Berkeley City Charter, it was determined that the total number of votes cast for Mayor in Berkeley at the November 2024 General Election was 52,493. The requisite number of signatures required to qualify this initiative is 5% of 52,493 or **2,625.**

I have examined, or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9114 and 9115; and

Have determined that the petition contained **317** valid signatures of qualified registered voters in the City of Berkeley based on the random sample examination set forth in section 9115 and the formula prescribed by the California Secretary of State; and

That this number represents **113.25%** of the total number of signatures needed to qualify the initiative therefore;

The petition is found to be sufficient to require the City Council of the City of Berkeley to take the appropriate action specified in the California Elections Code.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this **20th** day of **May 2026.**

DocuSigned by:
Cynthia Cornejo
6E5C0617DC2444D...

Cynthia Cornejo
Interim, Registrar of Voters
County of Alameda
State of California

04

Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Initiative Petition – Ordinance Replacing the City's $0.01/oz General Tax on Sugar Sweetened Beverages With a $0.02/oz Special Tax to Fund Public Health, Nutrition and Water Access

RECOMMENDATION

1) Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.

2) If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impacts related to the recommended action.

CURRENT SITUATION AND ITS EFFECTS

An initiative petition titled "Sugar-Sweetened Beverage Special Tax" was filed with the City Clerk on May 19, 2026. The proponents of this petition submitted 5,138 prima facie signatures.

Under Berkeley City Charter Article XIII, the number of valid signatures required for a sufficient petition is at least 5% of the votes for all candidates for Mayor in the previous mayoral election. In November 2024, there were 52,493 votes for candidates for Mayor, with 5% of that number equaling 2,625.

The Alameda County Registrar of Voters verified the signatures based on the random sample examination set forth in accordance with California Elections Code Sections 9211 and 9115. The petition was certified by the Registrar of Voters as being sufficient on May 29, 2026.

Additionally, with respect to who can author arguments for measures placed on the ballot by petition, Elections Code Section 9282 provides the City Council may authorize the Council as a whole, or members of the Council, to submit an argument against the initiative ordinance. The Council may also decline to designate an author to file an argument against the measure.

BACKGROUND
Pursuant to the City Charter, Article XIII, Section 92, once a petition has been found to have a sufficient amount of signatures, the City Council must consider whether to a) Adopt said ordinance without alteration within twenty days after the attachment of the City Clerk's certificate of sufficiency to the accompanying petition (subject to a referendary vote, under the provision of Article XIV of this Charter); or b) Submit the ordinance to the voters of the City of Berkeley at the next general election. However, since this initiative imposes a tax, if must be placed on the ballot and cannot be adopted by the Council.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
There are no identifiable environmental effects or climate impacts associated with the subject of this report.

RATIONALE FOR RECOMMENDATION
The proposed action is mandated by state codes and the provisions of the City Charter.

ALTERNATIVE ACTIONS CONSIDERED
None.

CONTACT PERSON
Mark Numainville, City Clerk, 981-6900

Attachments:
1. Resolution
   Exhibit A: Full Text of Measure
2. City Clerk's Certificate of Sufficiency

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

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE FOR A SUGAR-SWEETENED BEVERAGE SPECIAL TAX FOR THE NOVEMBER 3, 2026 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2026 General Municipal Election, an Initiative Ordinance for a Sugar-Sweetened Beverage Special Tax; and

WHEREAS, certain actions are required in connection with said election; and

WHEREAS, through Resolution No. 72,236-N.S. adopted on April 21, 2026, the Council has requested that the Alameda County Board of Supervisors consolidate the General Municipal Election with the Presidential General Election; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that full text of the measure and the City Attorney's analysis shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the Registrar of Voters of Alameda County is requested to perform services in connection with said election at the request of the City Clerk.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed initiative measure shall appear and be printed upon the ballots to be used at said election as follows:

Shall the measure replacing the City's $0.01 per fluid ounce general tax on the distribution of sugar-sweetened beverages with a $0.02 per fluid ounce special tax to fund public health, nutrition, and drinking water accessibility programs by nonprofits, the City, or Berkeley Unified School District, retaining current exemptions for small retailers, milk products, baby formula, alcoholic beverages, and medical and weight-loss products, estimated to generate approximately $2,200,000 annually, until repealed by the voters, be adopted?	YES NO

BE IT FURTHER RESOLVED that the text of the initiative ordinance be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits
A: Text of Ordinance

CITY OF BERKELEY - CITY CLERK
2026 MAR 19 AM 11:23

The People of the City of Berkeley ordain as follows:

SECTION 1. Title.

This measure shall be known and may be cited as the "Sugar-Sweetened Beverage Product Distribution Tax."

SECTION 2. Findings and Purpose.

WHEREAS, the consumption of sugar-sweetened beverages ("SSB") in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, many studies demonstrate that high intake of SSB is associated with risk of Type 2 Diabetes, obesity, tooth decay, coronary heart disease, and other diet-related chronic disease; and

WHEREAS, billions of dollars have been spent by sugary beverage corporations, namely Coca-Cola and PepsiCo, in an ongoing massive marketing campaign, which particularly targets children and people of color; and

WHEREAS, Coca-Cola and PepsiCo were found to be the world's 1st and 2nd largest sources of plastic pollution, the health effects of which are only beginning to be understood; and

WHEREAS, an African American resident of Berkeley is 14 times more likely than a White resident to be hospitalized for Type 2 Diabetes; and

WHEREAS, 40% of 9th graders in Berkeley High School have either overweight or obesity; and

WHEREAS, in Berkeley, the proportion of Black (~45%) and Latinx children (~40%) that have overweight and obesity is over double that of white children; and

WHEREAS, in California, by the third grade, six in ten children (61%) have experienced tooth decay and one in five children (22%) have untreated tooth decay; and

WHEREAS, from 2016 to grant cycle FY2024-25, the City of Berkeley allocated over $11.9 million generated from the SSB distributor tax for grantmaking back into the community. Of this grantmaking, 48% ($5.7M) was allocated to BUSD and 52% ($6.2M) to community-based organizations for initiatives that prioritized populations that are intentionally targeted by the beverage industry and that disproportionately experience the worst health outcomes associated with SSB consumption; and

WHEREAS, the tax revenue has funded 77,890 health and dental screenings; 31,180 community workshops, classes, and events; 3,111 food assistance touchpoints, reaching 59,386 unduplicated community members; and

WHEREAS, the consumption of SSBs in Berkeley declined after the distributor tax was imposed and has been sustained over time; and

WHEREAS, on November 4, 2014, a broad base of Berkeley voters, led by the Berkeley Healthy Child Coalition, passed Measure D by a 75% majority and on November 5, 2024 its reauthorization with no sunset (Measure Z) passed by an 80% majority; and

WHEREAS, in 2021 the California Public Health Department released a report that a 2 cent per ounce state excise tax on sugary drinks would lead to a 7% reduction in Type 2 Diabetes incidence over one year and 13,900 cases of Type 2 Diabetes prevented; and

WHEREAS, in 2021 the California Public Health Department released a report that a 2 cent per ounce state excise tax on sugary drinks would lead to a reduction of 1,620,000 decayed, missing, and filled teeth and $135 million in healthcare savings over ten years; and

WHEREAS, in 2021 the California Public Health Department released a report that a 2 cent per ounce state excise tax on sugary drinks would save more than 1.8 billion dollars in health care costs; and

NOW THEREFORE, the People of the City of Berkeley desire to implement an increase in the sugar-sweetened beverage distributor tax from 1 cent per ounce to 2 cent per ounce, change this excise tax from a General Tax to a Special Tax, and dedicate the proceeds from such levy to fund specific projects to help prevent diet-related conditions like Type 2 Diabetes, heart disease, tooth decay, and obesity, to fund clean water access and healthier food and beverage environments, and to provide public health and nutrition education.

SECTION 3. Sugar-Sweetened Beverage Product Distribution Tax.

Title 7 of the Berkeley Municipal Code is hereby amended by adding Chapter 7.73 to read as follows:

7.73.010 Relationship to Chapter 7.72; Mutual Exclusivity.

A. The tax imposed by this Chapter is intended to replace, and not to supplement, the tax imposed by Chapter 7.72 of this Code.

B. During any period in which the tax imposed by this Chapter is being collected, the tax imposed by Chapter 7.72 shall be suspended as provided in Section 7.72.005.

C. In the event a court of competent jurisdiction issues a final, non-appealable judgment holding that this Chapter is invalid or unenforceable in whole or in substantial part, the tax imposed by Chapter 7.72 shall automatically resume being collected as provided in Section 7.72.005, without the need for further voter approval or City Council action.

7.73.020 Excise tax.

A. In addition to any other taxes imposed by the City, the City hereby levies a special tax of two cents ($0.02) per fluid ounce on the privilege of Distributing Sugar-sweetened beverage products in the City. The tax imposed under this chapter shall be used solely for the purposes set forth herein. All proceeds generated by this chapter shall be deposited into the Sugar Sweetened Beverage Tax Account.

B. For the purposes of this Chapter, the volume, in ounces, of a Sugar-sweetened beverage product shall be calculated as follows:

1. For a Sugar-sweetened beverage, the volume, in fluid ounces, of Sugar-sweetened beverages distributed to any person in the course of business in the City.

2. For Concentrates, the largest volume, in fluid ounces, of Sugar-sweetened beverages that could be produced from the Concentrate. In accordance with rules and regulations promulgated by the City pursuant to Section 7.73.050, the largest volume, in fluid ounces,

that would typically be produced from the Concentrate shall be determined based on the manufacturer's instructions or, if the Distributor uses the Concentrate to produce a Sugar-sweetened beverage, the regular practice of the Distributor.

C. The tax shall be paid upon the first nonexempt Distribution of a Sugar-sweetened beverage product in the City. To the extent that there is a chain of Distribution within Berkeley involving more than one Distributor, the tax shall be levied on the first Distributor subject to the jurisdiction of the City. To the extent the tax is not paid as set forth above for any reason, it shall be payable on subsequent Distributions and by subsequent Distributors; provided, that the Distribution of Sugar-sweetened beverage products may not be taxed more than once in the chain of commerce.

D. Beginning on January 1, 2028, and annually thereafter, the tax rate shall be adjusted by the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-Hayward metropolitan area, as published by the U.S. Bureau of Labor Statistics, for the twelve-month period ending on December 31. In no event shall the tax rate be decreased below the initial rate of two cents ($0.02) per fluid ounce. In addition, no single annual adjustment shall exceed five percent.

7.73.030 Exemptions.

The tax imposed by this Chapter shall not apply:

A. To any Distributor that is not subject to taxation by the City under the laws of the United States or the State of California;

B. To any Distribution of a Sugar-sweetened beverage product to a Retailer with less than $100,000 in annual gross receipts, as defined in Section 9.04.025, in the most recent year;

C. To any Distribution of sweeteners that are sold separately from, and are not themselves, a Sugar-sweetened beverage product. Examples include, without limitation, bagged granulated sugar, a jar of molasses, a jug of maple syrup, or a container of honey; or

D. To any Distribution of Concentrates to a Food Products Store as defined in Section 23F.04.010, if the Food Products Store then offers the Concentrate for sale for later use by customers of that store. F

7.73.040 Definitions.

A. "Added caloric sweetener" means any monosaccharide or disaccharide sweetener that is suitable for human consumption, perceived as sweet when consumed, and adds calories to the diet if consumed, such as glucose, fructose, and sucrose. Examples include, without limitation, cane sugar, beet sugar, high-fructose corn syrup, and honey. For the purpose of this Chapter, Added caloric sweetener does not include a substance that exclusively contains natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.

B. "Alcoholic beverage" means any beverage subject to tax under Part 14 (commencing with Section 32001) of the California Revenue and Taxation Code, as that Part may be amended from time to time.

C. "Beverage for medical use" means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution for infants and children formulated to prevent or treat dehydration due to illness. "Beverage for medical use" shall also mean a "medical food" as defined in Section 109971 of the California

Health and Safety Code, as that definition may be amended from time to time. "Beverage for medical use" shall not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.

D. "Business Entity" means any Person except for a natural person.

E. "City" means the City of Berkeley, California.

F. "City Manager" means the City Manager of the City of Berkeley or his or her designee.

G. "Consumer" means a natural person who purchases a Sugar-sweetened beverage product in the City for a purpose other than resale in the ordinary course of business.

H. "Community-Based Organization" means a 501c3 non profit organization that serves the Berkeley community.

I. "Concentrate" means a syrup, powder, frozen or gel mixture, or other product containing one or more sweeteners as an ingredient, intended to be used in making, mixing, or compounding a sweetened beverage by combining the Concentrate with one or more other ingredients. Concentrate does not include natural or common sweeteners.

J. "Distribution" or "Distribute" means the transfer of title or possession (1) from one Business entity to another for consideration or (2) within a single Business entity, such as by a wholesale or warehousing unit to a retail outlet or between two or more employees or contractors. "Distribution" or "Distribute" shall not mean the retail sale to a Consumer.

K. "Distributor" means any Person who Distributes Sugar-sweetened beverage products in the City.

L. "Grant" means a discretionary award of public funds made by and/or on behalf of the City of Berkeley for the purposes of providing public services or benefits, and not primarily for the acquisition of goods or services for the City.

M. "Grant Agreement" means a written contract executed by the City and a Grant recipient that prescribes the terms and conditions of a Grant.

N. "Milk" means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content, and plant-based milk substitutes, that are marketed as milk, such as soy milk and almond milk.

O. "Person" means an individual, trust, firm, joint stock company, business concern, business trust, government, receiver, trustee, syndicate, social club, fraternal organization, estate, corporation, including, but not limited to, a limited liability company, and association or any other group or combination acting as a unit.

P. "Public Purpose" means a direct benefit conferred upon the residents of the City of Berkeley that is reasonably related to the City's governmental responsibilities and does not consist primarily of private benefit.

Q. "Retailer" means any Person who serves Sugar-sweetened beverage products to a Consumer.

R. "Sugar-sweetened beverage" means any beverage intended for human consumption to which one or more Added caloric sweeteners has been added and that contains at least 2 calories per fluid ounce.

1. "Sugar-sweetened beverage" includes, but is not limited to all drinks and beverages commonly referred to as "soda," "pop," "cola," "soft drinks," "sports drinks," "energy drinks," "sweetened ice teas," or any other common names that are derivations thereof.

2. "Sugar-sweetened beverage" shall not include any of the following:

(a) Any beverage in which milk is the primary ingredient, i.e., the ingredient constituting a greater volume of the product than any other;

(b) Any beverage for medical use;

(c) Any liquid sold for use for weight reduction as a meal replacement;

(d) Any product commonly referred to as "infant formula" or "baby formula"; or

(e) Any alcoholic beverage.

S. "Sugar-sweetened beverage product" means a Sugar-sweetened beverage or Concentrate.

7.73.050 Duties, responsibilities and authority of the City Manager.

A. It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter, and to keep an accurate record thereof.

B. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter, including provisions for the reexamination and correction of returns and payments, and for reporting. Such rules and regulations may include, but are not limited to, the following:

1. The determination of the frequency with which a Distributor must calculate the tax. This determination shall not constitute an increase of the tax.

2. The determination of the frequency with which a Distributor must pay the tax. This determination shall not constitute an increase of the tax.

3. The determination of whether and how a Distributor must register with the City.

4. The determination of whether and how a Distributor who receives, in the City, Sugar-sweetened beverage products from another Distributor must report to the City the name of that Distributor.

5. The determination of whether and how a Distributor who receives, in the City, Sugar-sweetened beverage products from another distributor must report to the City the volume of Sugar-sweetened beverage products received from that Distributor.

6. The determination of what other documentation is required to be created or maintained by a Distributor.

C. The City Manager shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted.

D. The City Manager shall establish a Sugar Sweetened Beverage Tax Account, and all proceeds generated by this chapter shall be deposited by the City Manager into the Sugar Sweetened Beverage Tax Account. Such proceeds shall be used only for the specific purposes identified in section 7.73.070.

7.73.060 Collection.

A. The amount of any tax, penalty, and interest imposed under the provisions of this Chapter shall be deemed a debt to the City. Any Distributor owing money under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such amount.

B. In order to aid in the City's collection of taxes due under this Chapter, any Retailer that receives Sugar-sweetened beverage products from a Distributor shall, in accordance with rules and regulations promulgated by the City Manager pursuant to Section 7.73.040, either:

1. report to the City all such transactions, the volume in ounces of Sugar-sweetened beverage products received in each transaction, and the identity and contact information of the Distributor from whom the Sugar-sweetened beverage products were received; or

2. collect the tax that would be payable as a result of the transaction by the Distributor from whom the Sugar-sweetened beverage product was received and remit it to the City; or

3. provide to the City evidence that the Distributor from whom the Sugar-sweetened beverage products were received has registered as a Distributor with the City and that registration is current.

C. The City Council is authorized to have the taxes imposed by this Chapter collected by the County of Alameda or the California Board of Equalization in conjunction with the collection of other taxes for the City. If the City Council exercises this authorization, the duties and responsibilities of the City Manager shall be given, as appropriate, to the County of Alameda or the California Board of Equalization, which may delegate such duties and responsibilities as necessary and as authorized by law.

D. All proceeds generated by this chapter shall be deposited by the City Manager into the Sugar Sweetened Beverage Tax Account. Such proceeds shall be used for the specific purposes identified in section 7.73.070.

7.73.070 Expenditure Plan.

A. Statement of Intent.

The singular goal of the tax expenditure plan is to invest in the health of the Berkeley community, especially the priority populations that are targeted by beverage industry practices and who collectively experience the worst health outcomes related to the overconsumption of sugary drinks. The priority populations are as follows: children and their families, with an emphasis on young children who are in the process of forming lifelong habits; children and young adults living in households with limited resources; and populations disproportionately experiencing health disparities related to sugar-sweetened beverage consumption and/or disproportionately targeted by the beverage industry's marketing. Priority recipients for funding are Berkeley-based community-based organizations that serve any or all of the above populations and employ the following strategies. Strategies that address the goals and objectives of this funding include:

1. Transforming the systems, policies, environments, structures, and norms that underlie sugary drink consumption.

2. Developing community capacity to improve health by transforming systems, policies, environments, structures, and norms through increasing leadership potential of community members and young people, especially those serving priority populations.

3. Supporting community programming designed to change norms toward consumption of healthy food and beverages, and referrals for primary care and dental services.

4. Impacting sugary drink marketing and retail environments (i.e. availability, promotion, price, placement in convenient stores, and advertising.) especially those that disproportionately target priority populations.

5. Improving access to, and the production of, healthy food and drinks for priority populations in Berkeley.

B. Purpose and Authority. The revenues generated by this Chapter shall be allocated by the City on an annual basis and with independent oversight provided by the Panel of Experts described in section 7.73.120 to ensure that expenditures are consistent with this section. The City may use funds permissibly by investment in transforming the systems, policies, environments, structures, and norms that underlie sugary drink consumption and improving access to healthy food and drinks for priority populations, including by issuing Grants to Community-Based Organizations, City agencies, and/or Berkeley Unified School District. This special tax is imposed under the City's constitutional authority as a charter city under Article XI, Section 5 of the California Constitution.

C. Permissible Projects. Except as provided for in section 7.73.070D1, funds from the Sugar Sweetened Beverage Tax Account shall be used exclusively for the following specific purposes:

1. To help fight Type 2 Diabetes, heart disease, tooth decay, and childhood obesity.

(a) Providing healthcare services, public health services, and health education to underserved residents, which includes but is not limited to, projects related to:

i. Providing multilingual obesity reduction and Type 2 Diabetes prevention program education and physical activity programming for low-income young children, families, and adults at risk for Type 2 Diabetes.

ii. Chronic Disease and Oral Health Prevention Projects, including prevention education, hypertension screenings, and dental treatments through community outreach including but not limited to at senior centers, barbershops, and supportive housing sites.

iii. Embed dental hygienists in primary care visits to provide oral health screening and preventive care to low-income residents.

iv. Implementing train-the-trainer nutrition and healthy beverage education programs with medical facility volunteers and staff to improve patient diets and reduce SSB consumption.

v. Providing culturally responsive SSB health awareness and prevention services to non-English speakers and communities, including to immigrants, refugees, and undocumented residents.

vi. Engaging youth interns to promote water and healthy food at Berkeley High School and in the surrounding community.

vii. Healthy living education programs serving low-income children and families.

viii. Community action research and/or advocacy projects to address Type 2 Diabetes, heart disease, and childhood obesity.

ix. Investment in community health clinics and community health worker services.

(b) Providing improved access to healthy foods and beverages to underserved communities, which includes but is not limited to, projects related to:

i. Community garden initiatives that provide no-cost and affordable produce distribution.

ii. Community garden initiatives that support at-home vegetable, herb, and fruit growing through workshops and no/low-cost gardening supply distribution.

iii. Healthy food pantries and direct food distribution.

iv. Fruit and vegetable incentive programs for CalFresh recipients.

v. Summer meals for children.

vi. Healthy free food and free meal delivery distribution services for seniors or disabled residents.

vii. Programs to improve nutritional quality of foods in childcare settings.

(c) Projects that reduce the marketing, availability and consumption of sugary drinks, which includes but is not limited to, projects related to:

i. Projects that reduce the marketing, availability, and consumption of sugary drinks in retail establishments, including vending machines.

ii. Projects to train and support community leaders, including adult residents and young organizers, to engage in campaigns to change systems, structures, environments resulting in improved norms for beverage consumption.

iii. Community action research and/or advocacy projects to develop interventions on SSB marketing, distribution, and placement.

2. To fund clean water access.

(a) Projects that improve access to tap water, which includes but is not limited to, projects related to:

i. Installing water hydration and refill stations in community-accessible places for public consumption, including but not limited to schools, parks, and libraries.

ii. Community action research and/or advocacy projects to develop strategies to increase water access and consumption.

(b) Projects that promote the consumption of water, which includes but is not limited to, projects related to:

i. Training youth and young adult Water Ambassadors to advocate for water bottle filling station installations to promote water consumption among Berkeley youth.

ii. Projects that collaborate with youth and adult sports leagues to provide norms change toward healthier hydration through parent/participant education and material infrastructure development.

iii. Peer health education and counter-media messaging to promote water and reduce SSB use among youth.

3. To provide health and nutrition education.

(a) Urban Farming and Gardening Initiatives, which includes but is not limited to, projects related to:

i. Berkeley Unified School District-wide Cooking and Gardening program, weaving garden-based learning into student life, including after-school nutrition and cooking curricula and family engagement nights.

ii. Community farm programming, including outdoor classroom and cooking facilities, hands on learning workshops, spaces to grow one's food, and distribution of supplies for home growing of vegetables, fruits, and herbs.

(b) Nutrition and Cooking Education, which includes but is not limited to, projects related to:

i. Train-the-trainer nutrition education programs with community medical facility staff and volunteers to support behavior change around healthy food and beverages.

ii. Training youth and community educators to provide nutrition education.

iii. Hands-on cooking and nutrition classes for kids, teens, families, and seniors.

iv. Recruit and train youth educators to lead workshops and social media campaigns promoting healthy alternatives to SSBs for children and youth ages 6–24.

v. Provide culturally and linguistically appropriate SSB awareness workshops and health events for uninsured/underinsured, non-English speaking residents such as Latino immigrants and day laborers.

(c) Art Projects that Promote Health and Nutrition, which includes but is not limited to, projects related to:

i. Art contests and exhibits to engage youth and community in SSB prevention, water promotion, and nutrition education.

ii. Public mural projects that counter beverage industry marketing by focusing on healthy lifestyle images and environments.

4. All specific projects listed within this subdivision may be funded through the provision of Grants to Community-Based Organizations, City departments, and/or Berkeley Unified School District.

D. Distribution of Funds.

1. Implementation Costs. In addition to the purposes set forth in this section, the City of Berkeley may allocate no more than fifteen percent (15%) of the funds raised by this chapter to pay for reasonable expenses incurred which relate to the planning and ongoing implementation of the tax. Such payments include, but are not limited to, the Finance Department's staffing and management costs related to the Sugar Sweetened Beverage Tax Account, costs necessary to review and approve Grants, for the City's staffing necessary for the operation of the Panel of Experts described in section 7.73.120, and for other purposes necessary for the planning and ongoing implementation of this chapter. These expenses shall be accounted for, and such accounted amount allocated to the City, up to the maximum amount set forth herein, shall be removed from the Sugar Sweetened Beverage Tax Account prior to distribution for the permissible projects and/or grants described in this section.

2. Community Grants. No less than forty-two and one-half percent (42.5%) of the funds raised by this chapter shall be allocated as Grants to Community-Based Organizations or City departments to accomplish the specific purposes set forth in this section.

3. Grants and Payments to Berkeley Unified School District. No less than forty-two and one-half percent (42.5%) of the funds raised by this chapter may be allocated as Grants to Berkeley Unified School District to accomplish the specific purposes set forth in this section, including projects to reduce the consumption of sugar-sweetened beverages, through the implementation and enhancement of the Berkeley Unified School District cooking and gardening programs.

7.73.080 Grant Issuance and Limitations.

A. Issuance. The City of Berkeley may use money allocated from the Sugar Sweetened Beverage Tax Account to issue competitive Grants in compliance with this Chapter to Community-Based Organizations, City agencies, and/or the Berkeley Unified School District. Such Grants shall be issued based on an application process developed by the City Manager and the Panel of Experts described in section 7.73.120. Grants shall be approved by the City Council based on recommendations from the Panel of Experts, and shall be issued specifically to accomplish one or more of the specific purposes set forth in this chapter. Grants shall be distributed by the Department of Health, Housing, and Community Services' Public Health Division.

B. Conflicts of Interest. No Public elected official, Public employee, or appointed official shall participate in the making, awarding, or administration of a Grant where prohibited by Government Code section 1090 or the Political Reform Act (Government Code section 87100 et seq.).

C. Open Meetings. All Grants shall be recommended and/or approved in an open and public meeting pursuant to the Ralph M. Brown Act (Government Code section 54950 et seq.) based on reports produced by the Panel of Experts described in section 7.73.120 analyzing Grant applications.

1. Panel of Experts' recommendations related to any Grant award shall include:

(a) Statement of Public Purpose;

(b) Proposed scope of services;

(c) Proposed performance measures;

(d) Proposed Grant amount;

(e) Identification of any known conflicts of interest; and

(f) Confirmation of compliance with eligibility requirements.

2. All Grant awards shall be publicly posted on a City of Berkeley website within thirty (30) days of approval and retained online for not less than five (5) years.

D. No Grant funds shall be disbursed without an executed Grant Agreement. Each Grant Agreement shall include:

1. Description of public purpose;

2. Scope of work, budget, and eligible use of funds;

3. Prohibitions described in this section;

4. Reporting requirements and performance metrics;

5. Right of City inspection and audit;

6. Insurance and indemnification requirements, where appropriate;

7. Clawback and termination provisions; and

8. Record retention requirements.

E. Limitations. Grant funds shall not be used for:

1. Support of or opposition to any political party, candidate, ballot measure, or campaign activity;

2. Lobbying activities beyond those permitted for federal tax-exempt entities;

3. Purposes not authorized by the Grant Agreement.

7.73.090 Refunds.

Whenever any tax under this Chapter has been paid more than once or has been erroneously or illegally collected or received by the City, it may be refunded only as provided in Chapter 7.20 of the Berkeley Municipal Code.

7.73.100 Enforcement.

Except as otherwise provided by this Chapter or by rule or regulation promulgated by the City Manager, the tax imposed by this Chapter shall be administered in the same manner as taxes imposed pursuant to Chapter 9.04 and, without limitation, shall be subject to the same delinquency penalties, appeals processes and other enforcement provisions set forth in Chapter 9.04.

7.73.110 Not a sales and use tax.

The tax imposed by this Chapter is a tax upon the privilege of conducting business, specifically, Distributing Sugar sweetened beverage products within the City of Berkeley. It is not a sales, use, or other excise tax on the sale, consumption or use of Sugar-sweetened beverage products.

7.73.120 Sugar-Sweetened Beverage Product Panel of Experts.

A. There shall be established the Sugar-Sweetened Beverage Product Panel of Experts to make recommendations on how and to what extent the City should establish and/or fund programs to

reduce the consumption of sugar-sweetened beverages in Berkeley and to address the effects of such consumption, including by developing and issuing Requests for Proposals, and analyzing and making recommendations to the City Council for the issuance of Grants. The Panel's recommendations related to the issuance of Grants and funding of Berkeley Unified School District projects shall be provided as a package to the Council for approval on at least an annual basis.

B. An officer or employee of the City designated by the City Manager shall serve as secretary of the Panel. The City shall be responsible for providing sufficient staff to the Panel for its operations, including its grantmaking functions.

C. In accordance with Chapter 2.04, the Panel shall be composed of nine members appointed by the City Council.

D. Terms shall expire and vacancies shall be filled in accordance with the provisions of Section 2.04.030 through 2.04.145 of this Code.

E. Each member of the Panel must:

1. Have experience in community-based youth food and nutrition programs; or

2. Have experience in school-based food and nutrition programs and be referred by the Berkeley Unified School District; or

3. Have experience in early childhood nutrition education; or

4. Have experience in researching public health issues or evaluating public health programs related to Type 2 Diabetes, obesity, and sugary drink consumption; or

5. Be a licensed medical practitioner.

F. In accordance with Section 3.02.040, members of the Panel may be reappointed but shall not serve more than eight consecutive years.

G. The Panel shall, by majority vote, do each of the following:

1. Annually appoint one of its members as chair and one of its members as vice-chair;

2. Approve bylaws to facilitate the proper functioning of the Panel;

3. Establish a regular time and place of meeting, with a minimum of 4 meetings per fiscal year. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. Minutes for each meeting shall be recorded, kept, and maintained; and

4. Develop and issue the Requests for Proposals for use of Grants

5. Review, analyze, and make recommendations to the City Council for the issuance of Grants to Community-Based Organizations, City agencies, and/or Berkeley Unified School District. Grants made from the Sugar Sweetened Beverage Tax Account shall be approved by the City Council, based on the recommendations of the Panel, to accomplish the specific purposes set forth in section 7.73.070.

6. Confirm that all Grant recipients comply as a permissible project

7. Publish an annual report that includes the following:

(a) recommendations on how to allocate the Sugar Sweetened Beverage Tax Account and the City's general funds to reduce the consumption of sugar sweetened beverages in Berkeley and to address the results of such consumption;

(b) recommendations for Grants for City Council approval, as well as updates on Grant Agreement executions;

(c) information, if available, concerning the impact of this Chapter on the public health of the residents of the City; and

(d) any additional information that the Panel deems appropriate.

H. Within 15 days of receipt of the publication of the Panel's annual report, the City Manager shall cause the report to be published on the City's Internet website and to be transmitted to the City Council and the Governing Board of the Berkeley Unified School District.

I. The Panel shall include in its recommendations the specific considerations related to permissible projects outlined in the expenditure plan. The City Council shall consider but need not follow, the Panel's recommendations, and shall include in all Council decisions related to the Panel recommendations, the specific considerations related to permissible projects outlined in the expenditure plan.

J. The Panel is permitted to make recommendations for multi-year Grants commitments, and, if approved by the City Council, funds from the Sugar Sweetened Beverage Tax Account may be encumbered for such purposes across fiscal years.

7.73.130 Increase appropriations limits.

Pursuant to California Constitution article XIIIB, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this tax for each of the four fiscal years from 2027-28 through 2030-31.

7.73.140 Amendment.

A. The City Council, without a vote of the people, may, either permanently or temporarily, increase the dollar amount of the threshold for the small-business exemption in Section 7.73.030B, and adjust the tax rate pursuant to the CPI rate, as described in section 7.73.020D. In addition, the City Council may amend technical, procedural and administrative provisions of this measure, including deadlines, error correction or conforming amendments required by changes to state law, provided that such amendments are consistent with and further the purposes of the measure, and allow for the continued collection and expenditure of funds in the manner set forth in the measure.

B. The City Council, without a vote of the people, may repeal this Chapter by ordinance if a court of competent jurisdiction has issued a final, non-appealable judgment holding this Chapter invalid or unenforceable in whole or in substantial part.

7.73.150 Duration.

The ordinance codified in this chapter shall be effective until repealed or modified by the voters of the City of Berkeley.

SECTION 4. Chapter 7.72 Suspended While Chapter 7.73 Is Operative.

Title 7 of the Berkeley Municipal Code is hereby amended by adding section 7.72.005 to read as follows:

7.72.005 Suspension During Operation of Chapter 7.73.

A. Notwithstanding any other provision of this Chapter, the tax imposed by this Chapter 7.72 shall not be collected, and no person shall be required to pay the tax imposed by this Chapter, during any period in which the tax imposed by Chapter 7.73 of this Code is being collected.

B. This Chapter shall remain in full force and effect during any period of suspension under subdivision (A), and the tax imposed by this Chapter shall automatically resume being collected if and when the tax imposed by Chapter 7.73 ceases to be collected for any reason, including but not limited to:

1. A final, non-appealable judgment of a court of competent jurisdiction holding that Chapter 7.73 is invalid or unenforceable;

2. Repeal of Chapter 7.73; or

3. Any other circumstance that causes the tax imposed by Chapter 7.73 to cease being collected.

C. For purposes of this Section, "final, non-appealable judgment" means a judgment as to which the time for all appeals has expired, or as to which all appeals have been exhausted.

SECTION 5. Chapter 7.72 May Be Repealed In Certain Circumstances.

Title 7 of the Berkeley Municipal Code is hereby amended by revising Chapter 7.72 section 7.72.110 to read as follows:

7.72.110 Amendment.

A. The City Council, without a vote of the people, may, either permanently or temporarily, increase the dollar amount of the threshold for the small-business exemption in Section 7.72.020(B).

B. Notwithstanding any other provision of this Chapter or the Berkeley City Charter, the City Council may, without a vote of the people, repeal this Chapter by ordinance, provided that all of the following conditions are satisfied:

1. Chapter 7.73 of this Code, or a successor chapter imposing a special tax on the distribution of sugar-sweetened beverage products, has been in effect and continuously collected for a period of not less than ten (10) years;

2. No lawsuit or administrative proceeding challenging the validity or enforceability of Chapter 7.73 (or its successor) is pending in any court or before any administrative body; and

3. No court of competent jurisdiction has issued any judgment, whether or not final, holding Chapter 7.73 (or its successor) invalid or unenforceable in whole or in substantial part.

C. If the City Council repeals this Chapter pursuant to subdivision (B), but Chapter 7.73 (or its successor) is subsequently held invalid or unenforceable by a final, non-appealable judgment of a court of competent jurisdiction, the City Council may, without a vote of the people, reenact this Chapter by ordinance at the tax rate in effect immediately prior to its repeal.

SECTION 6. Effective Date and Operative Date.

This chapter shall be effective ten (10) days after certification by the City Council of the returns of the election indicating approval by a majority of the voters voting in the election of the measure enacting this chapter. The operative date for the excise tax imposed hereunder shall be on April 1, 2027.

SECTION 7. Termination.

The authority to levy the tax imposed by this measure shall not expire until repealed or modified by the voters of the City of Berkeley.

SECTION 8. Severability.

If any provision of this measure, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this measure are severable. The People of the City of Berkeley hereby declare that this measure, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional. The People of the City of Berkeley further declare their desire that this measure provide funding as described for to help fight Type 2 Diabetes, heart disease and childhood obesity by providing healthcare; clean water access; and health and nutrition education to low-income Berkeleyans; and that each of these vital City services are independently important of one another.

SECTION 9. Conflicting Measures.

This measure is intended to be comprehensive. It is the intent of the People of the City of Berkeley that, in the event this measure appears on the same ballot as one or more measures relating to the imposition of a sugar-sweetened beverage tax, the provisions of the other measure or measures shall be deemed in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures may be implemented only to the extent that those provisions are not in conflict with each provision of this measure. The provisions of a conflicting measure or measures shall be deemed in conflict with this measure if such conflicting measure or measures would institute, amend, raise, lower or in any way alter Berkeley's sugar-sweetened beverage tax. If this measure is approved by a majority of the voters, but does not receive a greater number of affirmative votes than any other measure or measures appearing on the same ballot regarding a sugar-sweetened beverage tax, then this measure shall take effect to the extent not in conflict with said other measure or measures.

SECTION 10. Amendment.

The City Council, without a vote of the people, may amend Chapters 7.72 and 7.73 as set forth in this measure, and may repeal Chapter 7.72 as set forth in this measure. The City Council may also amend technical, procedural and administrative provisions of this measure, including deadlines,

error correction or conforming amendments required by changes to state law, provided that such amendments are consistent with and further the purposes of the measure, and allow for the continued collection and expenditure of funds in the manner set forth in the measure.

SECTION 11. Liberal Construction.

This measure is an exercise of the initiative power reserved to the People of the City of Berkeley to help fight Type 2 Diabetes, heart disease and childhood obesity by providing healthcare; clean water access; and health and nutrition education to low-income Berkeleyans; and shall be liberally construed to effectuate that purpose.

SECTION 12. Municipal Affair.

The People of the City of Berkeley hereby declare that, separately and together, the following purposes constitute municipal affairs: to help fight Type 2 Diabetes, heart disease and childhood obesity by providing healthcare; clean water access; and health and nutrition education to low-income Berkeleyans. The People of the City of Berkeley hereby further declare their desire for this measure to coexist with any similar tax measures adopted at the city, county or state levels.

BERKELEY CITY CLERK CERTIFICATE OF PETITION

I, Mark Numainville, City Clerk of the City of Berkeley, California, do hereby certify the following:

An Initiative Petition entitled: "Sugar-Sweetened Beverage Special Tax" was filed with the Berkeley City Clerk on May 19, 2026 within the statutory time limit and forwarded to the office of the Alameda County Registrar of Voters for verification; and

The petition contained **5,148** unverified signatures; and

Pursuant to the Charter of the City of Berkeley, in order to be sufficient, the petition must have been signed by at least **2,625** qualified registered voters of the City of Berkeley, the number being equal to 5% of the total votes cast for all candidates for mayor in the last general municipal election; and

I have examined or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

I have determined that the petition contained a valid signature rate of **174%** based on a random sample of the signatures as performed and certified by the Registrar of Voters in Exhibit A attached herewith; and

This number meets or exceeds the valid signature rate needed to qualify the initiative; therefore

The petition is found to be sufficient to require the City Council of the City of Berkeley to take appropriate action specified under Article XIII of the Berkeley City Charter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 10th day of June, 2026.

Mark Numainville
City Clerk
City of Berkeley

Exhibit A

REGISTRAR OF VOTERS CERTIFICATE TO PETITION

I, **Cynthia Cornejo,** Interim, Registrar of Voters for the County of Alameda, State of California, hereby certify that:
An Initiative Entitled: Initiative Ordinance Sugar-Sweetened Beverage Special Tax, was filed with the Berkeley City Clerk within the statutory time limit and forwarded to this office for verification on May 22, 2026; and

The petition contained **5,148** unverified signatures; and

In accordance with Article XIII of the Berkeley City Charter, it was determined that the total number of votes cast for Mayor in Berkeley at the November 2024 General Election was 52,493. The requisite number of signatures required to qualify this initiative is 5% of 52,493 or **2,625.**

I have examined, or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9114 and 9115; and

Have determined that the petition contained **454** valid signatures of qualified registered voters in the City of Berkeley based on the random sample examination set forth in section 9115 and the formula prescribed by the California Secretary of State; and

That this number represents **174%** of the total number of signatures needed to qualify the initiative therefore;

The petition is found to be sufficient to require the City Council of the City of Berkeley to take the appropriate action specified in the California Elections Code.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this **29th** day of **May 2026.**

DocuSigned by:
Cynthia Cornejo
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Cynthia Cornejo
Interim, Registrar of Voters
County of Alameda
State of California

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Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Police Accountability Board – Appointment of Alternate Member

RECOMMENDATION
Adopt a Resolution appointing an Alternate Commissioner to the Police Accountability Board (PAB).

FISCAL IMPACTS OF RECOMMENDATION
All PAB commissioners are eligible to receive a stipend of up to $300 per month.

CURRENT SITUATION AND ITS EFFECTS
There are currently two vacant seats on the PAB, including one alternate position.

Mayor Ishii has nominated Dwayne Phillips to serve on the Police Accountability Board as an Alternate Commissioner. Dwayne Phillips meets the eligibility criteria as verified by city staff in accordance with the requirements of the City Charter and may be appointed by a majority vote of the Council.

Commissioner	Nominated By
vacant	Mayor Ishii
Joshua Buswell-Charkow	Councilmember Kesarwani
vacant	Councilmember Taplin
Benjamin "Ben" J. Nash	Councilmember Bartlett
Stephanie Allan	Councilmember Tregub
Leah Wilson	Councilmember O'Keefe
Patrick DeTemple	Councilmember Blackaby
Joshua Cayetano	Councilmember Lunaparra
Randy Wells	Councilmember Humbert
vacant	Alternate

Article XVIII, Section 125, Part 6 of the City Charter states, "The Mayor and each City Councilmember shall nominate one candidate from an applicant pool at a meeting of the City Council and that each individual nominee must be approved by a majority vote of the City Council."

Members of the Police Accountability Board must:

- Be a resident of the City
- Be at least 18 years of age
- Not be an employee, officer, or contractor with the City, a current sworn police officer from any agency, or a current employee, official, or representative of an employee association representing sworn police officers
- Be fair minded and objective with a demonstrated commitment to community service

The City Charter indicates that desirable qualities of a Board member are familiarity with human resources, law, police procedures, police oversight, or involvement in civil rights or community organizations and that the City Council shall endeavor to establish a Board that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City.

BACKGROUND

Measure II was adopted on November 3, 2020, by the voters of Berkeley to establish an Office of the Director of Police Accountability and create a new Police Accountability Board (hereafter "Board"), both of which are independent of the City Manager. The members of the Board are approved by vote of the full Council.

In June of 2021 the Mayor and Members of the City Council nominated and appointed the initial nine members of the PAB and also appointed one alternate commissioner.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The appointment is provided for by the City Charter and pursuant to the nomination submitted by Mayor Ishii.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:
1: Resolution

RESOLUTION NO. -N.S.

APPOINTMENT OF DWAYNE PHILLIPS AS AN ALTERNATE MEMBER ON THE POLICE ACCOUNTABILITY BOARD

WHEREAS, Measure II was adopted on November 3, 2020 by the voters of Berkeley to create a new Police Accountability Board; and

WHEREAS, Article XVIII, Section 125, Part 6 provides for the Council's appointment of board members; and

WHEREAS, the Mayor Ishii submitted a nominee for an alternate appointment by the full council; and

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the following applicant is hereby appointed as Alternate Member on the Police Accountability Board:

Nominee	**Nominated By**
Dwayne Phillips	Council

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Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Police Accountability Board – Appointment of New Member

RECOMMENDATION
Adopt a Resolution appointing a new member to the Police Accountability Board (PAB) nominated by Mayor Ishii.

FISCAL IMPACTS OF RECOMMENDATION
All PAB commissioners are eligible to receive a stipend of up to $300 per month.

CURRENT SITUATION AND ITS EFFECTS
There are currently two vacant seats on the PAB, including one alternate position.

Mayor Ishii has nominated Jasmina Viteskic to serve on the Police Accountability Board. Jasmina Viteskic meets the eligibility criteria as verified by city staff in accordance with the requirements of the City Charter and may be appointed by a majority vote of the Council.

Commissioner	Nominated By
vacant	Mayor Ishii
Joshua Buswell-Charkow	Councilmember Kesarwani
vacant	Councilmember Taplin
Benjamin "Ben" J. Nash	Councilmember Bartlett
Stephanie Allan	Councilmember Tregub
Leah Wilson	Councilmember O'Keefe
Patrick DeTemple	Councilmember Blackaby
Joshua Cayetano	Councilmember Lunaparra
Randy Wells	Councilmember Humbert
vacant	Alternate

Article XVIII, Section 125, Part 6 of the City Charter states, "The Mayor and each City Councilmember shall nominate one candidate from an applicant pool at a meeting of the City Council and that each individual nominee must be approved by a majority vote of the City Council."

Members of the Police Accountability Board must:

- Be a resident of the City
- Be at least 18 years of age
- Not be an employee, officer, or contractor with the City, a current sworn police officer from any agency, or a current employee, official, or representative of an employee association representing sworn police officers
- Be fair minded and objective with a demonstrated commitment to community service

The City Charter indicates that desirable qualities of a Board member are familiarity with human resources, law, police procedures, police oversight, or involvement in civil rights or community organizations and that the City Council shall endeavor to establish a Board that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City.

BACKGROUND

Measure II was adopted on November 3, 2020, by the voters of Berkeley to establish an Office of the Director of Police Accountability and create a new Police Accountability Board (hereafter "Board"), both of which are independent of the City Manager. The members of the Board are approved by vote of the full Council.

In June of 2021 the Mayor and Members of the City Council nominated and appointed the initial nine members of the PAB and also appointed one alternate commissioner.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The appointment is provided for by the City Charter and pursuant to the nomination submitted by Mayor Ishii.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:
1: Resolution

RESOLUTION NO. -N.S.

APPOINTMENT OF JASMINA VITESKIC TO THE POLICE ACCOUNTABILITY BOARD

WHEREAS, Measure II was adopted on November 3, 2020 by the voters of Berkeley to create a new Police Accountability Board; and

WHEREAS, Article XVIII, Section 125, Part 6 provides for the Council's appointment of board members; and

WHEREAS, the Mayor Ishii submitted a nominee for appointment by the full council; and

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the following applicant is hereby appointed to the Police Accountability Board:

Nominee	**Nominated By**
Jasmina Viteskic	Mayor Ishii

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Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: David White, Deputy City Manager

Subject: Appointment of Director of Public Works

RECOMMENDATION

Adopt a resolution confirming the appointment of James (Jamie) Parks as the Director of Public Works to be effective August 17, 2026, at an annual salary of $270,000.

FISCAL IMPACTS OF RECOMMENDATION

The salary and benefits for the Director of Public Works are included in the Department's budget. The position is funded through a combination of funding sources as follows: three percent from Public Works Special Funds, 81 percent from Enterprise Funds, and 16 percent from Internal Service Funds.

CURRENT SITUATION AND ITS EFFECTS

In accordance with the City Charter, Section 28(b) of Article VII, City Council is being asked to confirm the appointment of James (Jamie) Parks to the position of Director of Public Works with an annual salary of $270,000. Upon Council confirmation, the City will finalize the employment offer with an effective start date of August 17, 2026. The Director of Public Works is an at-will, benefitted department head position reporting to the Deputy City Manager.

To identify the City's next Director of Public Works, the Human Resources Department conducted a comprehensive nationwide executive search. This process included key stakeholder meetings to develop the ideal candidate profile and recruitment brochure; extensive direct and indirect outreach in addition to traditional advertising; and targeted engagement with public works professionals nationwide. The City leveraged professional networks such as American Public Works Association (APWA), regional public works associations, Municipal Management Association of Northern California, and other public sector leadership organizations. Using tools like LinkedIn Recruiter, Human Resources also conducted direct outreach to current and emerging public works and transportation leaders in comparable jurisdictions to ensure a robust and diverse candidate pool.

As a result of this multifaceted search effort, the City received 58 applications for the position. Following an extensive screening and evaluation process, the most competitive applicants advanced to oral board examinations conducted by panels of technical experts, internal department directors, and community stakeholders. Top candidates were then invited to final interviews with the City Manager and Deputy City Manager.

Jamie Parks brings over 20 years of experience in transportation planning, capital project delivery, and public administration. He currently serves as Assistant Director for the Oakland Department of Transportation, where he oversees operations and administration, including capital funding strategy, personnel and labor relations, parking enforcement, construction inspection, and street maintenance.

Previously, Jamie managed the Livable Streets Division at the San Francisco Municipal Transportation Agency (SFMTA), leading the City's $300 million capital program to improve street safety. Under his leadership, the division launched the nationally recognized Quick Build Program, implemented more than 45 miles of protected bike lanes, and led development of San Francisco's Vision Zero Action Strategy.

Jamie has consistently prioritized organizational capacity building as the foundation for advancing policy and infrastructure improvements. His accomplishments include reducing vacancy rates in both Oakland and San Francisco, streamlining project approval and funding processes through code amendments, and securing more than $200 million in competitive capital grants.

Jamie holds a Bachelor of Arts in Mathematics and History from Johns Hopkins University and a Master of Science in Transportation Engineering from Northwestern University.

BACKGROUND

The Department of Public Works provides essential services to the community each day. Its mission is to deliver high-quality services with pride, courtesy, and excellence. Through efficient, cost-effective service delivery and strong partnerships with residents, Public Works supports Berkeley's reputation as a leading city for sustainable and innovative municipal operations.

Refuse and Recycling – Berkeley has a long-standing commitment to reducing and ultimately eliminating landfill waste. The City established one of the nation's first municipal recycling programs and, in 2019, adopted one of California's most comprehensive ordinances regulating single-use foodware and litter. Berkeley operates its own transfer station and waste-collection franchise – an uncommon model in the region.

Streets and Utilities – Responsible for street maintenance, sewer maintenance, the Clean City Program (illegal dumping, litter removal, encampment support), and street sweeping.

Facilities Management – Provides electrical maintenance and Radio Shop services; building and janitorial services; and property-management support. The division maintains public facilities, traffic signals, pedestrian control devices, and streetlights.

Public Works Administration – Responsible for departmental leadership, strategic planning, policy development, budget and financial administration, human resources, payroll, legislative coordination, and information-systems support.

Engineering and Capital Infrastructure – Oversees the Sidewalk Program, Sanitary Sewer Program, Pavement Rehabilitation Program, Stormwater, Utilities, Land-Use Permitting, and capital improvements to City facilities. Berkeley voters approved the $100 million T1 Infrastructure Bond in 2016, and more than $40 million in capital projects are currently underway. In 2024, voters approved Measure FF, a parcel tax expected to generate $15 million annually for repairs to streets, sidewalks, and pedestrian paths.

Transportation Division – Manages transportation planning, traffic engineering, parking, bicycle and pedestrian planning, and alternative transportation programs. The division collaborates extensively with neighborhoods, community groups, and business associations to implement programs that support a safe, efficient, and sustainable transportation network.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Appointing James (Jamie) Parks as the Director of Public Works will provide the City with an experienced and effective leader to guide one of Berkeley's most critical service-delivery departments. Following a comprehensive nationwide search, Jamie emerged as the top candidate due to his strong record in municipal operations, capital program delivery, organizational improvement, and transportation safety initiatives. His proven leadership experience in Oakland and San Francisco, combined with his technical expertise and commitment to public service, make him well-qualified to lead the department and support the City's long-term infrastructure and service-delivery goals.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON
David White, Deputy City Manager, (510) 981-7000

Attachments:
1: Resolution

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

CONFIRMING THE APPOINTMENT OF JAMES PARKS
AS DIRECTOR OF PUBLIC WORKS

WHEREAS, the City of Berkeley conducted a comprehensive nationwide executive search to identify the most qualified candidates for the Director of Public Works position, which included key stakeholder meetings, extensive direct and indirect outreach beyond traditional advertising, and targeted engagement with public works professionals across the country, as well as direct outreach to emerging and established public works leaders to create a qualified and diverse candidate pool; and

WHEREAS, James Parks has over twenty years of experience in transportation planning, capital project delivery, and public administration, and currently serves as Assistant Director for the Oakland Department of Transportation, where he oversees department operations and administration including capital funding strategy, personnel and labor relations, parking enforcement, construction inspection, and street maintenance; and

WHEREAS, while serving as Assistant Director at the Oakland Department of Transportation, James Parks has prioritized organizational capacity building, reducing vacancy rates, shepherding code amendments to streamline project approval and funding processes, and leading successful efforts to secure over $200 million in competitive capital grants; and

WHEREAS, James Parks previously managed the Livable Streets Division at the San Francisco Municipal Transportation Agency (SFMTA), where he oversaw a $300 million capital program to improve street safety, initiated the agency's Quick Build Program, implemented over 45 miles of protected bikeways, and led the development of San Francisco's Vision Zero Action Strategy; and

WHEREAS, James Parks holds a Bachelor of Arts in Mathematics and History from Johns Hopkins University and a Master of Science in Transportation Engineering from Northwestern University; and

WHEREAS, the City Manager has selected James Parks as the most qualified candidate for the position of Director of Public Works, and recommends his appointment based on his extensive experience, strong record in municipal operations, capital program delivery, organizational improvement, and transportation safety initiatives.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby confirms the City Manager's appointment of James Parks as Director of Public Works with an annual salary of $270,000, effective August 17, 2026, on the same terms and conditions as other regular at-will employees.

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Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Gilman, Director, Health, Housing & Community Services

Subject: 2026 Capacity Building Request for Proposals Funding Recommendations

RECOMMENDATION

Adopt a Resolution to:

1. Approve a capacity building contract with Bay Area Community Land Trust (BACLT) for Fiscal Years 2027 and 2028 for $200,000 per fiscal year, subject to approval in the budget process; and

2. Authorize the City Manager or designee to execute all original or amended documents or agreements to effectuate this action.

FISCAL IMPACTS OF RECOMMENDATION

The $400,000 in capacity building funds will come from the General Fund (funds generated pursuant to Measure U1, Fund #016). The Fiscal Year (FY) 2027 allocation of $200,000 was approved by Council as part of the FY2027 budget, and the FY2028 allocation is subject to Council approval in next year's budget process.

CURRENT SITUATION AND ITS EFFECTS

The City released its 2026 Capacity Building Request for Proposals (RFP) in March for $400,000 ($200,000 per year for Fiscal Years 2027 and 2028) to support capacity building for emerging affordable nonprofit housing developers. The grant is available to nonprofit developers who do not meet the experience thresholds in the Housing Trust Fund (HTF) and Small Sites Program (SSP) guidelines, based on the number of projects completed by the organization or the experience of the current staff. Applicants must be actively working on or pursuing new opportunities for affordable housing in Berkeley that could be eligible for City funding under the City's housing programs.

On May 7, 2026, the Housing Advisory Commission (HAC) took the following action:

Action: M/S/C (Simon-Weisberg/ Micael) to recommend that City Council approve a capacity building contract with Bay Area Community Land Trust (BACLT) for Fiscal Years 2027 and 2028 for $200,000 per fiscal year, subject to approval in the budget process; and authorize the City Manager or designee to execute all original or amended documents or agreements to effectuate this action.

Vote: Ayes: Bell, Micael, Potter, Shere, Simon-Weisberg, Twu, Vaughn-Scott. Noes: None. Abstain: None. Absent: Haycox, Mirvish.

The City received three proposals to the RFP by the submission deadline from the following organizations: BACLT, Insight Housing (Insight), and Supportive Housing Community Land Alliance (SCHLA). The funding recommendation supports a nonprofit developer that is actively pursuing opportunities in Berkeley and proposed measurable steps to increase its organizational capacity.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code Section 3504.1 as amended by AB 339. This project does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

BACKGROUND

The City has a history of providing operational support to local nonprofit developers through Community Housing Development Organization grants to qualified organizations (currently Resources for Community Development and Satellite Affordable Housing Associates). The City issued an RFP for capacity building for developers interested in pursuing SSP projects in 2018, through which BACLT was awarded $50,000. Council approved subsequent annual allocations to BACLT in amounts ranging from $100,000 to $200,000 per fiscal year through FY2025. This RFP created an open and transparent process for eligible organizations to request capacity building funds.

Staff's review included assessing each applicant's eligibility and evaluating the proposals using the following criteria for a total score of up to 100 points:

1. Program Development: Up to 40 points
2. Staff Development: Up to 25 points
3. Board Development: Up to 20 points
4. Additional Considerations: Up to 15 points

Bay Area Community Land Trust

Requested funds: $200,000 per fiscal year
Total Score: 97

BACLT is a social justice organization formed in 2006 that converts for-profit rental properties to permanently affordable, democratically run, cooperative housing for lower income households. BACLT's primary goals rest in preserving the affordability of housing that is at risk, especially in communities of color, and creating and sustaining resident empowerment through resident-run cooperatives. The organization completed two SSP projects, has a third underway, and is actively seeking new projects in Berkeley.

BACLT has undergone significant staffing transitions over the past few years. The current staff do not have all of the necessary housing development experience required to reach their goals, therefore, BACLT relies on consultants to provide project management support. With the requested funding, BACLT would pursue training opportunities from third-party professionals to build staff's technical skills in housing development. BACLT plans to increase salaries, improve employee benefits, and deepen and develop relationships and strategies to diversify of its funding sources. BACLT's proposal includes specific plans to acquire new projects in Berkeley, strengthen organizational strategies and infrastructure, improve its project feasibility analysis tool, and refine its co-op education and conversion to co-operative program. The proposal also outlined plans for Board development, including board retreats, structured onboarding, and financial stewardship training.

Insight Housing
Requested funds: $200,000 per fiscal year
Total Score: 85

Insight's mission is to ensure everyone in the community has a home through supportive and sustainable housing solutions. Founded in 1970, Insight has grown to deliver programs across seven counties in California including Alameda and Contra Costa counties. Insight developed or co-developed several projects in Berkeley, including permanent supportive housing, shelters, and board and care facilities. Insight currently has two projects underway in Berkeley – a new 85-unit PSH project to be constructed at the North Berkeley BART site and the renovation of MLK House, an 11-unit single-resident-occupancy project that will serve formerly homeless veterans.

Insight proposed using capacity building funds to support one full-time staff member dedicated to expanding and strengthening Insight's internal real estate development function, including pursuing new opportunities in Berkeley. Insight also proposed to use the requested funds toward building financial analytical capacity, developing operational feasibility analysis, and increasing cross-departmental coordination. Insight's proposal included plans to train new staff and the Board, but lacked specificity, focused on internal training only, and was not clear on how staff would receive training beyond onboarding.

Supportive Housing Community Land Alliance
Requested funds: $62,577 per fiscal year
Total Score: 54

Formed in 2021, SHCLA is a nonprofit community land trust dedicated to creating and preserving permanent housing for people living with serious mental illness. SCHLA has two projects in Oakland and does not have any active projects in Berkeley. The proposal did not identify steps toward pursuing new affordable housing opportunities in Berkeley.

SHCLA‘s proposed capacity building efforts focus on expanding its organizational expertise, strengthening internal systems, and supporting the transition from early project implementation to consistent production of affordable and supportive housing. SCHLA laid out expected outcomes but did not provide clear metrics for tracking their progress in achieving those outcomes.

SCHLA proposed building development capacity by creating project management tools, standardizing operating procedures, establishing communication protocols, and improving property management with technical tools. SHCLA mentioned incorporating resilience in program policies and decision-making tools but did not include much detail on how this could be achieved. The proposal did not address staff or Board development in detail, including any proposed trainings to deepen housing development knowledge.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
There are no direct environmental or climate impacts related to awarding capacity building grant funds.

RATIONALE FOR RECOMMENDATION
BACLT’s proposal included detailed efforts with specific metrics and measurable outcomes to build the organization’s capacity to support its active and future projects in Berkeley. Because BACLT submitted the strongest application, staff and the HAC recommend funding BACLT at their full request.

ALTERNATIVE ACTIONS CONSIDERED
Staff and the HAC considered splitting the available funding and making a portion available to the top two applicants or to all three applicants. However, capacity building funds are limited, and staff and commissioners were concerned about diluting the impact if funds were divided.

CONTACT PERSON
Jenny Wyant, Program Manager, HHCS, (510) 981-5228
Asavari Devadiga, Community Development Project Coordinator, HHCS, (510) 981-5426

Attachment:
1: Resolution

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

AUTHORIZING A CAPACITY BUILDING CONTRACT WITH BAY AREA COMMUNITY LAND TRUST

WHEREAS, the City Council established a Housing Trust Fund (HTF) program to assist in the development and expansion of housing affordable to low- and moderate-income persons, who either work or reside within the City of Berkeley, and authorized the City Manager to implement the HTF program; and

WHEREAS, there is a great need for affordable and special needs housing in the City of Berkeley as stated in the General Plan Housing Element and the City of Berkeley's Consolidated Plan; and

WHEREAS, on March 1, 2026, the City released the 2026 Capacity Building Request for Proposals (RFP) to support less experienced nonprofit developers build capacity to pursue future affordable housing opportunities in Berkeley; and

WHEREAS, up to $200,000 per fiscal year (FY) for FY2027 and FY2028 were made available to one or more qualifying developers through the RFP process; and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

WHEREAS, the RFP funds are general funds generated pursuant to Measure U1, and the FY2027 allocation was approved as part of the annual budget process on June 23, 2026, and the FY2028 allocation is subject to approval by Council in the FY2028 budget process.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council authorizes approving a capacity building contract with Bay Area Community Land Trust for Fiscal Years 2027 and 2028 for $200,000 per fiscal year, with the latter subject to approval in the FY2028 budget process.

BE IT FURTHER RESOLVED THAT the City Manager, or designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements, and any amendments will be kept on file in the Office of City Clerk.

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Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Gilman, Director, Health, Housing & Community Services

Subject: Accept Future of Public Health Funds from the State of California – Fiscal Year 2027 through Fiscal Year 2029

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or designee to execute grant agreements, and any resultant amendments, with the State of California for the Future of Public Health program in the amount of $912,213 for each of the following fiscal years: Fiscal Year 2027, Fiscal Year 2028, and Fiscal Year 2029 (Total not to exceed $2,736,639).

FISCAL IMPACTS OF RECOMMENDATION

The City's award for each Fiscal Year is $912,213 and each year's award needs to be expended by June 30th of the respective Fiscal Year: (Fiscal Year (FY) 2027, FY 2028, and FY 2029.)

Funds will be expended from ERMA account HHOFPH2301 (302-51-501-501-0000-000-451-various) and revenue will be received in 302-51-501-501-0000-000-451-432110. HHCS staff will request to add these funds to the FY 2027 budget in first amendment to the annual appropriation ordinance (AAO#1).

CURRENT SITUATION AND ITS EFFECTS

The State's Budget Act of 2022 created a new funding stream called the Future of Public Health, intended to support and grow California's public health infrastructure. The funds are in the state's baseline budget and are planned to be an ongoing source of funding.

At least 70% of funds must be spent on permanent City staff costs and training, and up to 30% can be used for equipment, supplies and other administrative costs.

The funding comes with certain requirements, including the submission of a public health improvement plan, the use of evaluation and Results Based Accountability to measure success, and staff participation in specified regional public health groups.

The City's public health activities are a City Strategic Plan Priority Project, advancing our goals to champion and demonstrate social and racial equity and to be a customer-

focused organization that provides excellent, timely, easily accessible service and information to the community.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code Section 3504.1 as amended by AB 339. This is a revenue contract, and it does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

BACKGROUND

The Health, Housing and Community Services Department received the first Future of Public Health award on September 23, 2022, from the State of California. The majority of the City's health grants support strictly defined health activities and services and come with extensive reporting requirements. In contrast, the Future of Public Health funds can be used relatively flexibly to support the City's infrastructure to plan, coordinate and deliver programs to address specific local needs, most notably reducing public health disparities.

The City of Berkeley is a thriving community with considerable wealth, high levels of education attainment, and a rich culture that all contribute to a healthy community. However, Berkeley is not a city where all people are living long and healthy lives and achieving the highest possible level of health. In Berkeley, African American/Black and other people of color are more likely to die prematurely and experience a wide variety of adverse health conditions throughout their lives.

Extensive work has been done by HHCS to analyze and identify solutions to overcome the underlying issues that perpetuate these health inequities, including the Community Health Assessment and Improvement Plan. HHCS programs serve individuals who are most impacted in Berkeley and continue to make progress toward solving health disparities.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts associated directly with accepting public health funding.

RATIONALE FOR RECOMMENDATION

Accepting these funds will allow the City to grow its infrastructure for public health while helping to support our Strategic Plan Priorities.

ALTERNATIVE ACTIONS CONSIDERED

If the City chooses not to accept this grant, it will result in an immediate and significant reduction in infrastructure support staff for HHCS and services that are provided to the most vulnerable members of our community.

CONTACT PERSON
Kellie Knox, Community Services Specialist III, HHCS (510) 981-5301

Attachments:
1: Resolution

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

ACCEPTING FUTURE OF PUBLIC HEALTH FUNDS FROM STATE OF CALIFORNIA - FISCAL YEAR 2027 THROUGH FISCAL YEAR 2029

WHEREAS, the City of Berkeley has been a public health jurisdiction for more than one hundred years; and

WHEREAS, in Berkeley communities of color, specifically African American/Black and Hispanic/Latinx residents continue to experience disparate health outcomes; and

WHEREAS, the City's Health, Housing and Community Services Department has previously been awarded Future of Public Health Funds from the State of California; and

WHEREAS, on September 13, 2022, by Resolution No. 70,505-N.S., Council authorized the City Manager or designee to submit grant agreements to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments for the Future of Public Health program for an amount of $912,213 for the Fiscal Year 2023; and

WHEREAS, on September 12, 2023, by Resolution No. 71,025-N.S., Council authorized the City Manager or designee to submit grant agreements to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments for the Future of Public Health program for an amount of $912,213 for each of the following: Fiscal Year 2024, Fiscal Year 2025, and Fiscal Year 2026; and

WHEREAS, in recognition of public health needs throughout California the state budget established funds for the Future of Public Health Program; and

WHEREAS, as a public health jurisdiction, the City is eligible to receive an allocation of Future of Public Health funds; and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or designee is hereby authorized to submit grant agreements to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments for the Future of Public Health program for an amount of $912,213 annually in Fiscal Year 2027, Fiscal Year 2028, and Fiscal Year 2029. Funds will be expended from ERMA account HHOFPH2301 (302-51-501-501-0000-000-451-various) and revenue will be received in 302-51-501-501-0000-000-451-432110. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.

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Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Gilman, Director, Health, Housing & Community Services

Subject: Contract No. 32400161 Amendment: Building Opportunities for Self-Sufficiency for Representative Payee Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or designee to execute a contract amendment with Building Opportunities for Self-Sufficiency (BOSS) for Representative Payee Services in an amount not to exceed $400,000 for the term of July 1, 2023, to June 30, 2027.

FISCAL IMPACTS OF RECOMMENDATION

The Behavioral Health Services Act will provide funding in the amount of $100,000 per fiscal year. The funds for Fiscal Year 2027 Budget are/will be available in Fund 315.

CURRENT SITUATION AND ITS EFFECTS

Through the Representative Payee Services provided by BOSS, the Berkeley Mental Health Division (BMH) can support an essential service for our most vulnerable community members.

BMH issued a Request for Proposals for Representative Payee services on June 14, 2018, and BOSS was selected as the most responsive responsible bidder. BOSS has provided Representative Payee services for BMH clients since March 1, 2019, and have acted in a satisfactory capacity. Before BOSS was selected to provide this service BMH provided representative payee services to clients through the Alameda County Substitute Payee Program (ACSPP). Although ACSPP acted as payee, they did not have direct contact with clients. BMH clinicians acted as intermediaries. Providing these services detracted BMH staff from providing higher priority outpatient mental health services. Most importantly providing these services altered the relationship between clients and clinicians, introducing angst and potentially damaging the rapport and trust necessary to produce healthy outcomes.

A new Request for Proposals for Representative Payee services will be processed during the second quarter of Fiscal Year 2027.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code Section 3504.1 as amended by AB 339. This project does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

BACKGROUND

When the Request for Proposals for Representative Payee services was opened on June 14, 2018, the City did not receive many responses. This service is challenging and not many community agencies are investing in providing the service. BOSS has demonstrated its capacity and specialized practices in administering a representative payee program, not only providing an enhanced level of service to consumers, but also indirectly supporting BMH clinicians to focus exclusively on their clients' more pressing mental health needs.

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 they used or saved the benefits. BOSS has proven to be a reliable provider of these important services for BMH clients.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

BOSS has the capacity to administer a representative payee program and to provide the extensive administrative requirements of the program, allowing BMH to better utilize their clinician's skills.

ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify an alternative action that would be consistent with the adopted BHSA Three-Year Program and Expenditure Plans.

CONTACT PERSON

Conor Murphy, Associate Management Analyst, HHCS, (510) 981-7611
Jeffrey Buell, Manager of Mental Health Services, HHCS, (510) 981-7682

Attachments:
1: Resolution

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

CONTRACT NO. 32400161 AMENDMENT: BUILDING OPPORTUNITIES FOR SELF-SUFFICIENCY FOR REPRESENTATIVE PAYEE SERVICES

WHEREAS, Mental Health Services Act (MHSA) funds were 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, 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, Behavioral Health Services Act (BHSA) funds will now be allocated to behavioral health jurisdictions across the state for the purposes of transforming the behavioral 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 June 16, 2026, City reviewed the BHSA Fiscal Years 2027 through 2029 Three Year Program and Expenditure Plan; and

WHEREAS, within the BHSA Fiscal Years 2027 through 2029 Three Year Program and Expenditure Plan is the objective to contract with a community-based organization to provide Representative Payee Services; and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

WHEREAS, funding for this contract from the Behavioral Health Services Act (Fund #315) in the amount of $100,000 per fiscal year will be available in the Fiscal Year 2027 Budget.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or designee is hereby authorized to execute a contract amendment with Building Opportunities for Self-Sufficiency for Representative Payee services through June 30, 2027, for $100,000 per year for a total amount not to exceed $400,000. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.

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Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Gilman, Director, Health, Housing, and Community Services

Subject: Contract No. 32600032 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for Public Facilities Improvements Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager, or designee, to amend Contract No. 32600032 with Building Opportunities for Self-Sufficiency (BOSS), increasing the amount by $54,480 for a public facility improvement project for a total amount not to exceed $249,480 with the contract end date of June 30, 2027.

FISCAL IMPACTS OF RECOMMENDATION

The Public Facilities Improvements Program is fully funded with Community Development Block Grant (CDBG) funds. Additional $54,480 in funding is available in the previous years' unencumbered funds for the Public Facilities Improvements Notice of Funding Availability (NOFA) allocations in CDBG (Fund 128).

CURRENT SITUATION AND ITS EFFECTS

BOSS was awarded Public Facilities Improvements funds through the Program Year 2023 (Fiscal Year 2024) NOFA to rehabilitate its emergency shelter facilities at the Ursula Sherman Village (USV). BOSS was recently made aware of a critical safety issue with an electrical panel at the site during a property insurance inspection and is requesting to revise the scope of work for the project to address this safety issue. This amendment would provide additional funds to install a new, code-compliant electrical panel and for soft costs such as architect and engineer services.

The Housing Advisory Commission's (HAC) Public Facilities Improvements Ad Hoc Committee met on May 19, 2026, to review BOSS's proposed amendment and recommended to have it considered by the full HAC at its June 4, 2026, meeting. The full HAC met on June 4, 2026, and reviewed BOSS's application and passed a motion to recommend that City Council approve the additional $54,480 allocation in CDBG funds available for the Public Facilities Improvements Program funding for the USV public facility improvement project.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code

Section 3504.1 as amended by AB 339. This project does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

BACKGROUND

CDBG funds are used for public facilities located within Berkeley that are open to the public and serve low-to-moderate income Berkeley residents. Public facility projects have included health and safety repairs, improving accessibility and/or energy efficiency improvements. BOSS was originally awarded $195,000 to enhance accessibility, safety, and functionality of the USV facilities, where BOSS operates an emergency shelter program for unhoused residents referred by the Alameda County Coordinated Entry System.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts related to amending the contract. A National Environmental Policy Act environmental review was completed for the proposed project, which concluded that the project would have no adverse effect on the human or physical environment.

RATIONALE FOR RECOMMENDATION

BOSS provides essential emergency shelter services to vulnerable community members who are experiencing homelessness. The proposed contract amendment aligns with the Public Facilities Improvements Program's objective to improve public facilities serving low- to moderate-income clientele by enhancing health and safety, accessibility, and/or energy efficiency.

ALTERNATIVE ACTIONS CONSIDERED

The Council may choose not to amend the contract. The City's capacity to provide emergency shelter services in a safe environment to people experiencing homelessness would be reduced without additional resources to address safety issues at the USV.

CONTACT PERSON

Jiro Arase, Associate Management Analyst, HHCS, (510) 981-7599

Attachments:
1: Resolution

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

CONTRACT NO. 32600032 AMENDMENT: BUILDING OPPORTUNITIES FOR SELF-SUFFICIENCY (BOSS) FOR PUBLIC FACILITIES IMPROVEMENTS PROGRAM

WHEREAS, the City of Berkeley is an entitlement jurisdiction which receives annual allocations of Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the City Council approved the allocation of Program Year (PY) 2023 CDBG funds to the Public Facilities Improvements Notice of Funding Availability (NOFA) via Resolution No. 70,830-N.S.; and

WHEREAS, Building Opportunities for Self-Sufficiency (BOSS) was awarded $195,000 through the PY 2023 NOFA to enhance accessibility, safety, and functionality of the Ursula Sherman Village (USV), which is an emergency shelter program for single adults and families with children experiencing homelessness; and

WHEREAS, BOSS has applied for additional funds for the USV public facility improvement project and has a demonstrated need for eligible rehabilitation; and

WHEREAS, on June 4, 2026, the Housing Advisory Commission (HAC) reviewed BOSS's application and passed a motion to recommend that City Council approve the additional $54,480 allocation in CDBG funds available for the Public Facilities Improvements Program funding for the USV public facility improvement project; and

WHEREAS, funding in the amount of $54,480 is available in CDBG (Fund 128); and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or designee, is authorized to amend Contract No. 32600032 with BOSS for Public Facilities Improvements Program, increasing the amount by $54,480 for a total amount not to exceed $249,480 with the contract end date of June 30, 2027.

BE IT FURTHER RESOLVED THAT the City Manager, or designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements and any amendments will be kept on file in the Office of City Clerk.

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Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Wahid Amiri, Interim Director, Public Works Department

Subject: Approval and Levy of 2018 Clean Stormwater Fee in FY 2027

RECOMMENDATION

Adopt a Resolution approving the proposed adjusted fees for the 2018 Clean Stormwater Fee and ordering the levy of the fees in Fiscal Year 2027.

FISCAL IMPACTS OF RECOMMENDATION

The Resolution would approve and order the levy of the 2018 Clean Stormwater Fee in Fiscal Year (FY) 2027. The fees are to be filed with Alameda County and included in the County's assessment roll. After collection by the County the total amount of the assessment, minus collection fee, is paid to the City of Berkeley. The revenue is posted in the Clean Storm Water Fund (Fund 616).

Approximately $3.5 million is expected to be collected from the 2018 Clean Stormwater Fee in FY 2027. Pursuant to the requirements of Article XIII D of the California Constitution, revenues derived from property-related fees shall not exceed the funds required to provide the service. The fund forecast included as Table 1 demonstrates compliance with this requirement.

Table 1 - FY 2027 Fund 616 Forecast

Beginning Balance	**$ 11,331,522**
Clean Stormwater Program Expenditures	**$ 9,539,561**
Revenue	
Clean Stormwater Fee (1991)	$ 1,913,857
2018 Clean Stormwater Fee	$ 3,345,512
2018 Clean Stormwater Fee - CPI increase	$ 157,781
Interest – Investment Pool	$ 355,603
Total Revenue	**$ 5,772,753**
To (from) Clean Storm Water Fund	**$ (3,766,808)**
Ending Balance	**$ 7,564,714**

A deficit of approximately $3.8 million is forecast for the Clean Storm Water Fund in FY 2027. The deficit can be covered by available fund reserves in the Clean Storm Water Fund. The deficit is a result of an accumulation of capital expenditures expected for FY 2027. These expenditures support several key initiatives, including construction of the FY 2025 Drainage Improvements Project, continued development of the Stormwater Master Plan, design and construction of the West Berkeley and Aquatic Park Drainage Improvement Project, and planning and design of additional trash capture and green infrastructure projects necessary to meet regulatory requirements.

CURRENT SITUATION AND ITS EFFECTS

The 2018 Clean Stormwater Fee ("2018 Fee") is subject to an annual adjustment tied to the Consumer Price Index - U for the San Francisco Bay Area as of December of each succeeding year (the "CPI"). Per the voter approved measure, any increase in the CPI in excess of 3% shall be cumulatively reserved as "Unused CPI" and shall be used to increase the maximum authorized rate in years in which the CPI is less than 3%. For the period beginning in December 2024 and ending in December 2025, the CPI increased by 3.04%. The annual adjustment for FY 2027 is limited to the prescribed maximum of 3% and the excess CPI increase of 0.04% will be reserved as "Unused CPI" balance to be used in future years.

As approved by voters, the annual adjustment may be calculated by taking the sum of the 1991 Clean Stormwater Fee ("1991 Fee") and the 2018 Clean Stormwater Fee and multiplying the sum by the allowable CPI increase. Calculating the adjustment in this manner allows for the inclusion of a 1991 Fee adjustment as part of the annual 2018 Fee increase. The cumulative adjustment of the 1991 Fee and the 2018 Fee, result in 2018 Fee increases of approximately 4.1%.

The table below details prior year and proposed FY 2027 annual rates for the property-related fee.

Table 2 - Summary of Annual Rates for 2018 Clean Stormwater Fee

Rate Category	FY 2026 Fee	Proposed FY 2027 Fee	Unit
Single-Family Residential			
Small	$ 48.59	$ 50.57	parcel
Medium	$ 60.74	$ 63.22	parcel
Large	$ 73.45	$ 76.46	parcel
Condominium	$ 48.59	$ 50.57	parcel
Single-Family Residential parcels with multiple single-family residences pay 22% higher rate			
Non-Single-Family Residential**			
Multi-Family Residential	$ 1,059.59	$ 1,102.82	acre

Comm / Industrial / Parking	$ 1,182.79	$ 1,231.05	acre
Office	$ 1,108.87	$ 1,154.11	acre
Institutional / Church	$ 1,010.30	$ 1,051.52	acre
School / Hospital	$ 924.06	$ 961.76	acre
Recreational	$ 714.61	$ 743.76	acre
Park	$ 73.92	$ 76.94	acre
Vacant (developed)	$ 61.60	$ 64.12	acre
Open Space / Agricultural	exempt		

* Single-Family Residential category also includes duplex, triplex and four-plex units.

** Non-Single-Family Residential parcel size is calculated to the tenth of an acre or portion thereof.

Detailed calculations of the annual adjustment and the corresponding rate increases are included in the 2018 Clean Stormwater Fee - Fiscal Year 2027 Adjustment Report (Attachment 2). Adoption of the Resolution would approve and order the levy of the 2018 Fee in FY 2027 at the rates described in this report. Following adoption, the fees will be filed with Alameda County and included on the County's assessment roll for collection. Revenue from the Fee will provide needed funding for the Stormwater Program which includes flood management, compliance with clean water requirements, operations and maintenance, and major capital improvements, all of which advance the City's Strategic Plan goals of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities; and being a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

In 1991, the City was required to obtain a National Pollutant Discharge Elimination System (NPDES) permit from the San Francisco Bay Regional Water Quality Control Board to improve the water quality of urban runoff and discharge stormwater runoff to the City's waterways. The permit requires that the City implement a stormwater control program and best management practices.

To meet the NPDES permit requirements, the City implemented a Clean Storm Water Fee in 1991 for all residences and businesses in the City. The City has been collecting approximately $2 million annually for this fee and rates have not been increased since the fee was established in 1991. Initially, collected revenues were sufficient to fund ongoing maintenance, operations, and capital improvements. However, beginning in Fiscal Year 2014, the program began operating at a deficit. In 2018, in an effort to increase revenues for the program, the City introduced the 2018 Clean Stormwater Initiative to establish a new property-related fee to be assessed separately and in addition to the existing 1991 Fee. Following a Proposition 218 process the initiative was approved by voters and the City Council adopted Resolution No. 68,483-N.S., ordering the levy. The assessment has been levied for the 2019 through 2026 fiscal years.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The 2018 Clean Stormwater Fee provides a secure funding source for environmental protection related to the impacts of stormwater on creeks and the San Francisco Bay. The fee maintains operations and maintenance activities and reduces environmental impacts of flooding, sink holes, trash, and debris.

RATIONALE FOR RECOMMENDATION

The additional funding will allow the City to fund the operating deficit without the use of general funds, continue maintenance service levels, meet clean water regulatory requirements, and develop a long-term financial plan for capital projects, to continue improving water quality and minimizing the impacts of flooding in local areas.

CONTACT PERSON

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Pejman Mehrfar, Manager of Engineering, Public Works, (510) 981-6439
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Attachments:
1: Resolution – Ordering the Levy of 2018 Clean Stormwater Fee in Fiscal Year 2027
2: 2018 Clean Stormwater Fee – Fiscal Year 2027 Adjustment Report

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

APPROVING THE LEVY AND COLLECTION OF THE CITY OF BERKELEY 2018 CLEAN STORMWATER FEE IN FISCAL YEAR 2027

WHEREAS, on February 13, 2018, the Council adopted Resolutions No. 68,334-N.S. and No. 68,335-N.S., to initiate the property related fee process and establish the balloting procedures for the 2018 Clean Stormwater Initiative consistent with California Constitution Article XIII D; and

WHEREAS, on April 3, 2018, the council conducted a public hearing at which a majority protest was not achieved, and subsequently adopted Resolution No. 68,381-N.S. directing the mailing of fee ballots to all property owners of properties within the City subject to the fee; and

WHEREAS, on May 29, 2018, following tabulation of fee ballots and confirming voter approval of the 2018 Clean Stormwater Initiative, Council adopted Resolution No. 68,483-N.S. accepting the ballot tabulation and ordering the levy of the 2018 Clean Stormwater Fee; and

WHEREAS, pursuant to the authority granted by voters, the 2018 Clean Stormwater Fee is subject to an annual increase based on the San Francisco - U Consumer Price Index (CPI), not to exceed 3% per year; and any increase in excess of 3% shall be cumulatively reserved as “Unused CPI” and shall be used to increase the maximum authorized rate in years in which the CPI is less than 3%. The maximum annual CPI adjustment for each property shall be calculated based upon the sum of the 1991 Clean Stormwater Fee and the 2018 Clean Stormwater Fee, and multiplying the sum by the CPI or 3% whichever is lower; and

WHEREAS, for the annual period ending in December 2025 the CPI increased by 3.04%; and

WHEREAS, the proposed adjustment for Fiscal Year 2027 is the maximum 3% permitted by the ballot approved measure and the remainder of 0.04% shall be reserved as “Unused CPI” to be used in future years when the CPI is less than 3%; and

WHEREAS, the proposed fee rate for FY 2027 of $63.44 per single-family equivalent unit is in accordance with a City staff authored report dated May 2026 and titled “2018 Clean Stormwater Fee – Fiscal Year 2027 Fee Adjustment Report” (“Report”); and

WHEREAS, the rate increases and the methodology used in the calculation of the rates are described in the Report and are in accordance with the voter approved measure; and

WHEREAS, revenues derived from this property-related fee do not exceed the funds required to provide the service in compliance with Article XIII D of the California Constitution.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the levy and collection of fees for FY 2027 at the rates specified in the Report.

BE IT FURTHER RESOLVED that shortly after the adoption of this Resolution, but in no event later than August 10th following such adoption, the City Clerk shall file a certified copy of this Resolution and a fee levy roll with the Auditor of Alameda County ("County Auditor"). Upon such filing, the County Auditor shall enter on the County's assessment roll opposite each lot or parcel of land the amount of fee thereupon as shown in the levy roll.

CITY OF BERKELEY

2018 CLEAN STORMWATER FEE

Fiscal Year 2027
Fee Adjustment Report

May 2026

Prepared by

RICARDO SALCEDO, PE
CITY OF BERKELEY
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION

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INTRODUCTION

OVERVIEW

In 1991, the City of Berkeley was required to obtain a national Pollutant Discharge Elimination System (NPDES) permit from the San Francisco Bay Regional Water Quality Control Board to improve the water quality of urban runoff and discharge storm water runoff to the City's waterways. The permit requires that the City of Berkeley implement a stormwater control program and best management practices. The City adopted the Clean Stormwater Fee in 1991 to comply with clean water regulations and provide a secure funding source for stormwater operations, maintenance, and capital improvements. The program includes flood management, compliance with clean water requirements, operations and maintenance, and major capital improvements. Stormwater fees are paid by property owners and the fees have not been increased since the program's inception in 1991. The program has been running a deficit since 2014 attributable to basic operations, maintenance, and compliance with clean water regulations. The Stormwater program also faces a backlog in capital improvements, with more than $208 million in project costs identified in the 2011 Watershed Management Plan[1].

In order to increase revenues for the Stormwater program, the City adopted Resolutions No. 68,334-N.S. and Resolution No. 68,335-N.S., to initiate the property related fee process and establish balloting procedures for the 2018 Clean Stormwater Initiative consistent with California Constitution Article XIII D. A public hearing was conducted on April 3, 2018 at which a majority protest was not achieved, subsequently Resolution No. 68,381-N.S. was adopted ordering the mailing of fee ballots to all property owners of properties within the City subject to the fee. Following the tabulation of votes, and confirming approval of the measure, Council adopted Resolution No. 68,483-N.S., accepting the ballot tabulations and ordering the levy of the City of Berkeley's 2018 Clean Stormwater Fee.

As approved by voters, the 2018 Clean Stormwater Fee is subject to an annual adjustment tied to the Consumer Price Index-U for the San Francisco Bay Area as of December of each succeeding year (the "CPI"), with a maximum annual adjustment not to exceed 3%. Per the voter approved measure any increase in the CPI in excess of 3% shall be cumulatively reserved as the "Unused CPI" and shall be used to increase the maximum authorized rate in years in which the CPI is less than 3%. The maximum authorized rate is equal to the maximum rate in the first fiscal year the Fee was approved adjusted annually by the lower of either 3% or the increase in the CPI plus any Unused CPI as described above. In order for the City's dedicated storm drainage revenue sources to satisfy costs requirement into the future, the annual

[1] Watershed Management Plan: https://berkeleyca.gov/your-government/our-work/adopted-plans/watershed-management-plan

adjustment for property may be calculated based upon the sum of the storm drainage fee and the existing Clean Storm Water Fee.

This abbreviated fee adjustment report, has been prepared by City staff to document the annual adjustment of the 2018 Clean Stormwater Fee for Fiscal Year 2027. The report also includes an abbreviated description of storm drainage infrastructure, the program's funding sources, and a fund forecast for Fiscal Year 2027.

CITY'S FACILITIES

The City operates and maintains a storm drainage system, as it is empowered to do so per Government Code Sections §38900 and §38901. It is comprised of an integrated system of storm drain pipes, culverts and ditches. Local creeks are not considered part of the City's storm drain system, although they receive most of the urban runoff and are impacted by how the City's storm drainage system functions.

The Berkeley area began experiencing residential development over one hundred years ago. As the community grew, the storm drainage system was developed along with the neighborhoods and commercial areas while still maintaining many native creek segments. Although the City is highly urbanized, there are a large number of open creek segments that cross streets, private properties and roadways through numerous culvert sections.

In the early 1990s, in response to the federal Clean Water Act amendment of 1987, municipalities were, for the first time, required to obtain an NPDES[2] permit from the California Regional Water Quality Control Board to address urban storm drainage runoff pollution. Under this permit, the City works to reduce stormwater pollution, protect and enhance its watersheds, preserve beneficial uses of local waterways, and implement State and federal water quality regulations within the limits of its jurisdiction. Over the years, the range of actions taken by the City has greatly increased in response to evolving regulatory requirements and community needs.

STORM DRAINAGE FUNDING

In response to the NPDES permit requirements, the City implemented a Clean Storm Water Fee in 1991 for all residences and businesses in the City. The City collects approximately $2 million annually from this fee which has not been increased since its 1991 inception. Initially, revenues were sufficient to fund ongoing maintenance, operations and capital improvement projects. However, beginning in Fiscal Year 2014,

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[2] NPDES stands for the National Pollutant Discharge Elimination System as specified in the Federal Clean Water Act. The City is one of the co-permittees named on the Alameda County NPDES permit issued by the Regional Water Board. The most recent MRP was issued in May 2022, however, these permits typically are renewed every five years, with each new iteration containing additional requirements.

the program began operating at a deficit. In response to this deficit, the City implemented the 2018 Clean Stormwater Fee.

FINANCIAL NEEDS SUMMARY

A Clean Stormwater Fund forecast for FY 2027 is provided below as Table 1.

Table 1- FY 2027 Fund Forecast

Projected Beginning Fund Balance	**$**	**11,331,522**
Costs		
Personnel Costs	**$**	**1,995,491**
Non-Personnel Costs		
Capital Improvement Program	$	6,000,000
Non-Personnel	$	1,544,070
Subtotal Non-Personnel Costs	**$**	**7,544,070**
Total Costs	**$**	**9,539,561**
Revenue		
Clean Stormwater Fee (1991)	$	1,913,857
2018 Clean Stormwater Fee	$	$3,503,293
Interest – Investment Pool	$	355,603
Total Revenue	**$**	**5,772,753**
To (from) Clean Storm Fund Reserves	**$**	**(3,766,808)**
Projected Ending Fund Balance	**$**	**7,564,714**

2018 CLEAN STORMWATER FEE RATE STRUCTURE ANALYSIS

All properties which generate storm and urban runoff which flow into the City's MS4 are served by the system. The amount of use attributed to each parcel is proportional to the amount of storm and urban runoff flow contributed by the parcel, which is proportional to the amount of impervious surface area (e.g. building roofs, pavement, etc.) on a parcel.

In this Report, the median single-family residential parcel is used as the basic unit of measure, called the single-family equivalent, or "SFE." Accordingly, since the primary quantifiable attribute for this fee structure is impervious surface area, the amount of impervious surface area on the median SFR parcel serves as the basic unit of impervious area.

The basic unit of impervious area can be expressed by the following formula:

Median SFR Parcel Area

x Average SFR Impervious Percentage

= SFE Impervious Area

The median SFR parcel is 0.11 acres (4,792 square feet). Careful analysis revealed that the average percentage of impervious area ("%IA") of the medium class of SFR parcels is 44.82%. Therefore, the amount of impervious area for the SFE is 2,148 square feet. This becomes the basis for calculating the SFEs for all other types of land uses. In order to accomplish this, a representative sample of each land use category was studied through aerial photographs to measure the actual impervious area, which was, in turn, used to calculate the %IA for each land use category.

SINGLE-FAMILY RESIDENTIAL PARCELS

Berkeley has a wide range of sizes of SFR parcels, which have varying levels of %IA. Generally, smaller parcels tend to have a higher proportion of impervious area than larger parcels, which tend to have a lower percentage of impervious area. (This can be best visualized by the fact that larger residential properties tend to have a larger proportion of pervious landscaping, and therefore less impervious area.) Therefore, the range of SFRs were broken into three size categories as shown in Table 2 below. Since the size of a parcel is considered in finite groups, the resultant SFEs were calculated on a per-parcel basis for each size category using the formula above.

It should be noted that the SFR category also includes multiplex parcels of two, three or four units, since their lot development characteristics do not vary significantly from the SFR parcels of similar size. In all, this includes the approximately 3,400 multiplex parcels in the City. Any residential structure with five or more units is categorized as multi-family residential ("MFR"), which is calculated separately. For parcels with multiple SFRs, analysis showed that those parcels contained 22% more impervious area than single-home SFRs within the same size category. Therefore, multiple-SFR parcels are computed separately.

Special Notes On Condominiums

Condominium units are particularly difficult to categorize as they are often on very small individual parcels, yet share larger common areas that are made up of landscaped (pervious) areas; parking lots and shared roofs (impervious); and other recreational uses (either pervious or impervious). The data for these variables are not readily available, so it is assumed that overall their characteristics were most similar to the small lot make up. Overall, condominium units are smaller than the average SFR, and may include two or more stories of residences in some cases. When combined with the various common areas (which were exempted from the SFE process), the overall effect would be less runoff impact than the median size SFR. Thus, the Small SFR rate was used.

Table 2- Summary of Single-Family Residential Parcels

Lot Type	Parcel Size Range (sf)	Total Parcels	% Imperv Area	SFE per Parcel	
				Single Home	Multiple Homes
Small	Under 3,200	2,417	65.73%	0.80	0.98
Medium	3,200 to 7,200	16,369	44.82%	1.00	1.22
Large	7,200 and over	2,690	29.81%	1.21	1.48
Condos	n/a	2,515	n/a	0.80	n/a
	TOTAL	**23,991**			

NON-SINGLE-FAMILY RESIDENTIAL PARCELS

Unlike the SFR parcels, the non-SFR parcels can vary widely in size as well as characteristics. For this reason, the parcels have been grouped into land use categories according their %IA characteristics (as shown in Appendix B) so that SFE per acre can be computed for each category using the following formula:

$$\frac{(43{,}560\ sf/acre)\ x\ \%IA}{2{,}148\ sf/SFE} = SFE\ per\ Acre$$

Where 2,148 square feet is the amount of the impermeable area in one SFE.

Table 3 below shows a summary of the non-single-family parcel SFEs for each non-SFR land use category.

Table 3 – Summary of Non-SFR Parcels

Land Use Category	Total Parcels	% Imperv Area	SFE per Acre
Multi-Family (Apartments)	1,497	86%	17.44
Commercial / Retail / Industrial	1,599	96%	19.47
Office	239	90%	18.25
Institutional / Church	281	82%	16.63
School / Hospital	29	75%	15.21
Recreational	28	58%	11.76
Cemetery / Park	64	6%	1.22
Vacant (developed)	546	5%	1.01
Open Space / Agricultural	30	Exempt	
	4,313		

Each individual parcel's SFE is then calculated by multiplying the parcel size (in acres[3]) times the SFE per acre for that land use category, as shown in the following formula:

Developed Vacant Parcels

Developed vacant parcels are distinguished from undeveloped vacant land by one of several characteristics. Typically, a developed vacant parcel has been graded to be ready for building construction (possibly as part of the original subdivision or adjacent street grading). In some cases, the parcel was previously improved, but the improvement has been removed. Although developed vacant parcels may have significant vegetative cover, the underlying soil conditions resulting from grading work can usually cause some rainfall to run off into the storm drainage system. The %IA for developed vacant parcels is conservatively assumed to be 5%. Vacant parcels that have significant impervious paving remaining from prior improvements may be classified as Commercial or some other classification best representing the %IA of the parcel.

Open Space and Agricultural Parcels are Exempt

The City's MS4 was developed in response to land development over the past several decades. Tracts of land that have not yet been developed, or have been used primarily for agricultural purposes, have not created an impact on the drainage system beyond

[3] Parcel size for non-single-family residential parcels is calculated to the tenth of an acre or portion thereof.

the natural condition, and are therefore considered to receive no service from the MS4. In practical terms, these parcels generate no additional storm runoff beyond the natural condition. For these reasons, open space and agricultural parcels are exempt from the storm drainage fee.

Berkeley is a City with some open space land, which can be situated on portions of developed parcels. For parcels that have a significant portion that is considered open space (or agricultural), those portions have been taken into consideration in the calculations of the %IA and SFEs. For SFR parcels, these open space lands have been included in the sampled lots size when calculating the average %IA, which produced a lower %IA for the large parcel category, and, thus, a lower SFE and Fee to accommodate the open space areas. For non- SFR parcels the fees are calculated on individual acreage. However, the open space portion has been deducted from the acreage prior to all analyses including %IA as well as SFE and fee calculation.

EFFECTS OF LOW IMPACT DEVELOPMENT

The current NPDES Permit requires certain properties to construct storm drainage treatment and attenuation facilities, also known as low impact development ("LID"). These facilities often are designed to capture a portion of the storm flows, retain them, and enable them to infiltrate into the ground. While this is intended to help filter pollutants from the water, it also can reduce the parcel's storm drainage runoff quantity to some extent. However, LID is designed to capture, retain and treat frequent, but low intensity storms. Conversely, the MS4 is designed around the infrequent, high intensity storms, those storms which will typically overflow most LID facilities. For this reason, no discount in the storm drainage fees is made available for parcels with LID facilities.

STORM DRAINAGE FEE CALCULATION

The primary metric in this analysis is the SFE as illustrated above. To arrive at the fee amount for the various land use categories, the total SFEs must be divided into the total revenue requirement to arrive at the rate per SFE. That calculation is represented by the following formula:

$$\frac{Total\ Assessments\ to\ be\ Collected}{Total\ SFEs} = SFE\ Rate$$

The total assessment to be collected in FY 2027 includes an allowable adjustment. As described in the Overview section of this report, the fee is subject to an annual adjustment calculated by taking the sum of the 1991 Clean Stormwater Fee and the 2018 Clean Stormwater Fee and multiplying the sum by the allowable CPI increase not to exceed 3%. For the period beginning in December 2024 and ending in December 2025, the CPI increased by 3.04%. As discussed in the Overview section of this report, "Unused CPI" balance from previous years can be used to increase the annual adjustment in years with CPI increases less than 3%. The annual adjustment for FY 2027 is limited to the prescribed maximum of 3% and the excess CPI increase of 0.04% will be reserved as "Unused CPI" balance to be used in future years.

The SFE calculation can be rewritten as follows:

$$\frac{2018\ Fee\ in\ FY\ 26 + (2018\ Fee\ in\ FY\ 26 + 1991\ Fee\ in\ FY\ 26) \times \%\ Increase}{Total\ SFEs}$$

$$= SFE\ Rate\ in\ FY\ 27$$

Or, using numbers from the analysis, the SFE Rate is:

$$\frac{\$3{,}345{,}512.04 + (\$3{,}345{,}512.04 + \$1{,}913{,}857.06) \times 0.03}{55{,}412.744\ SFEs} = \$\mathbf{63.22}\ \boldsymbol{per\ SFE}$$

This SFE rate amount is then multiplied by the SFE per parcel or SFE per acre for the various land use categories to arrive at the Storm Drainage Fee Rate Schedule shown in Table 4 below.

Table 4 - Storm Drainage Fee Schedule

Rate Category	SFE Rate	Proposed Fee	Unit
Single-Family Residential			
Small	0.79992	$ 50.57	parcel
Medium	1.00000	$ 63.22	parcel
Large	1.20933	$ 76.46	parcel
Condominium	0.79992	$ 50.57	parcel
Multiple SFR on a single parcel pay 22% higher rate			
Non-Single-Family Residential**			
Multi-Family Residential	17.44360	$ 1,102.82	acre
Commercial / Industrial / Parking	19.47193	$ 1,231.05	acre
Office	18.25493	$ 1,154.11	acre
Institutional / Church	16.63227	$ 1,051.52	acre
School / Hospital	15.21244	$ 961.76	acre
Recreational	11.76429	$ 743.76	acre
Park	1.21700	$ 76.94	acre
Vacant (developed)	1.01416	$ 64.12	acre
Open Space / Agricultural		exempt	

* Single-Family Residential category also includes duplex, triplex and four-plex units.
** Non-Single-Family Residential parcel size is calculated to the tenth of an acre or portion thereof

The proposed $63.22 SFE rate is well within the range of storm drainage rates adopted by other municipalities.

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Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Wahid Amiri, Interim Director, Public Works

Subject: Contract No. 32300214 Amendment: Belfor USA Group for On-Call Emergency Restoration, Mitigation and Remediation Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract amendment with Belfor USA Group for on-call emergency restoration, mitigation and remediation services, increasing the contract amount by $400,000 for a new not-to-exceed amount of $550,000 and extending the contract term through March 11, 2028.

FISCAL IMPACTS OF RECOMMENDATION

Funds are available in the proposed FY2027 Public Works Budget (General Fund 011 and Sanitary Sewer Operations- Fund 611) for restoration, mitigation and remediation services, pending approval from City Council. Other Funds may be utilized depending on the needs of City Departments.

CURRENT SITUATION AND ITS EFFECTS

The Public Works Department requires assistance from restoration companies that can respond to emergency situations 24 hours per day. These may include flood response, water damage, smoke or fire damage, sewer flooding incidents, and other unexpected damage to city property. Public Works is responsible for maintaining 400 miles of sanitary sewer main and laterals and 54 public buildings. Immediate restoration services may be necessary for City-owned buildings or private property impacted by a sewage backup or overflow from the City's main sewer line.

This contract will be able to be accessed by all City departments including Parks, Recreation and Waterfront, and the Library which also have public buildings that may require emergency restoration and remediation. The Police Department will also use this contract to support their efforts to secure public and private property that has been vandalized.

Amending this contract is in alignment with the City's Strategic Plan, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code Section 3204.1 as amended by AB 339. This project does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

BACKGROUND

The City issued a Request for Proposals (RFP) on May 27, 2022, Specification # 22-11522-C, for two on-call Emergency Restoration, Mitigation and Remediation Services contracts for a three-year term with the option to extend two 24-month options if exercised. On June 14, 2022, the City received two proposals, and the RFP was re-issued on August 9, 2022. On September 8, 2022, the City received six proposals which were evaluated by a multi-department review panel.

Belfor USA Group, Inc. was chosen as one of the most responsive and qualified companies to address the future restoration needs of the City with excellent references. Belfor's contract began on March 11, 2023.

Public Works has used the services of an outside restoration contractor for many years to respond to flooding due to air conditioning malfunction, pipe bursts, fire damage and sewer backups.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Restoration, mitigation and remediation services help prevent and remove environmental hazards such as water runoff, sewer waste and building debris. This contract amendment will help the City more quickly respond and stop potential environmental issues before they begin or escalate.

RATIONALE FOR RECOMMENDATION

Belfor has performed well under the current contract and was selected through a formal RFP process in 2022.

ALTERNATIVE ACTIONS CONSIDERED

If not amended, the City will be unable to respond to emergency remediation and restoration needs. This will negatively impact the City as the remediation and restoration needs will not be addressed in a timely manner.

CONTACT PERSON

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Aaron Baker, Superintendent, Public Works, 510-981-6452
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Wahid Amiri, Interim Deputy Director, Public Works, 510-981-6396

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

CONTRACT NO. 32300214 AMENDMENT: BELFOR USA GROUP FOR ON-CALL EMERGENCY RESTORATION, MITIGATION AND REMEDIATION SERVICES

WHEREAS, the City needs restoration, mitigation and remediation services to respond to emergency situations such as flood response, water damage, smoke or fire damage, sewer flooding incidents, and other unexpected damage to city and private property; and

WHEREAS, funding in the amount of $400,000 is available in the Public Works' General Fund 011 and Sewer Fund 611; and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

WHEREAS, on May 27, 2022, the City released a Request for Proposals (Specification No. 22-11522-C) for two on-call Emergency Restoration, Mitigation and Remediation Services contracts; and

WHEREAS, on August 9, 2022, the Request for Proposals was re-released, and the City received six submissions, which were reviewed and rated; and

WHEREAS, out of the six proposals, the Belfor USA Group was considered one of the best proposals and best qualified to meet the City's needs; and

WHEREAS, on November 12, 2022, City Council authorized the City Manager to execute a contract with Belfor USA Group for restoration, mitigation and remediation services with a total not-to-exceed amount of $150,000.

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 Belfor USA Group for on-call emergency restoration, mitigation and remediation services, increasing the contract amount by $400,000 for a new not-to-exceed amount of $550,000 and extend the contract term through March 11, 2028.

14

Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Wahid Amiri, Interim Director, Public Works

Subject: Contract No. 32600081 Amendment: Metro Elevator for Maintenance, Repairs and Emergency Response Services for Citywide Elevators

RECOMMENDATION

Adopt a resolution authorizing the City Manager to execute a contract amendment with Metro Elevator to provide maintenance, repairs, and emergency response services and to increase the contract amount by $300,000 for a total not to exceed $650,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the proposed Fiscal Year (FY) 2027 budget, pending approval from City Council. Resources for this contract are distributed across several funds including the General Fund (011), Sanitary Sewer Fund (611), Off-Street Parking Fund (627), Equipment Maintenance Fund (672), and Building Maintenance Fund (673). Funding for future years is subject to Council's approval of the proposed citywide budget for FY 2028.

CURRENT SITUATION AND ITS EFFECTS

Elevator maintenance, repairs and emergency response services are critical to maintaining the accessibility, safety, reliability, and operational needs of the City's elevators.

The City issued Request for Proposals (RFP) Specification No. 25-11723-C, with a submission due date of June 3, 2025. The City received three proposals in response. The selection committee, composed of subject matter experts from Public Works, evaluated the proposals.

The evaluation criteria used to rate the proposals were as follows: Project Approach (30%), Expertise and References (15%), Cost (25%), and Background (30%). Metro Elevator was awarded a contract as the best and most responsive bidder, which was executed in December 2025. Due to major repairs needed for several City elevators, including replacement of elevator car cables, an amendment is needed at this time to increase the not-to-exceed amount of the contract.

This contract will support the City's elevators, which are critical to support staff and community members, and is aligned with the Strategic Plan Priority of advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code Section 3504.1 as amended by AB 339. This project does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

BACKGROUND

The City currently utilizes 30 elevators located in 16 facilities. Proper maintenance, repair and emergency response services for City elevators supports the safety and accessibility of staff and community members, while also complying with state and federal safety requirements.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identified environmental sustainability or climate impacts associated with the execution this contract's amendment.

RATIONALE FOR RECOMMENDATION

Regular inspection and maintenance of elevators is required to meet safety regulations. This contract amendment will ensure compliance with state and local codes and improve responsiveness to emergency calls.

ALTERNATIVE ACTIONS CONSIDERED

If City Council does not approve the Contract, the city will not have the resources in place to maintain its elevators. This could limit access to members of the public and result in service disruptions.

CONTACT PERSON

Joy Brown, Operations Manager, (510) 981-6629
Aaron Baker, Facilities Maintenance Superintendent, (510) 981-6452
Tucker Brofft, Senior Management Analyst, (510) 981-5375

Attachment:
1: Resolution

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

CONTRACT NO. 32600081 AMENDMENT: METRO ELEVATOR FOR MAINTENANCE, REPAIRS AND EMERGENCY RESPONSE SERVICES FOR CITYWIDE ELEVATORS

WHEREAS, the City conducted RFP Solicitation No. 25-11723-C with bids due no later than June 3, 2025; and

WHEREAS, the City received three proposals and a selection committee, composed of subject matter experts from the Public Works Facilities Division and the Public Works Operations Division, met to evaluate the bids; and

WHEREAS, Metro Elevator was selected as the most responsive bidder and was awarded the contract; and

WHEREAS, Metro Elevator and the City executed Contract No. 32600081 in December 2025, which was approved through Resolution 71,932-N.S by Council on July 27, 2025, for an amount not to exceed $175,000; and

WHEREAS, Metro Elevator and the City executed an amendment to Contract No. 32600081, which was approved by Council on February 24, 2026, through Resolution 72,143-N.S. for an amended not-to-exceed amount of $350,000; and

WHEREAS, due to major repairs needed for several City elevators, including replacement of elevator car cables, an amendment is needed at this time; and

WHEREAS, funding is available in the Fiscal Year 2027 adopted budget in General Fund (011), Off-Street Parking Fund (627), Sanitary Sewer Fund (611), Equipment Maintenance Fund (672), and Building Maintenance Fund (673). Funding for future years is subject to Council's approval of the proposed citywide budget for Fiscal Years 2027-2028.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend the contract with Metro Elevator for maintenance, repairs, and emergency response services for citywide elevators for three years from September 1, 2025, to August 31, 2028, to increase the contract amount by $300,000 for an amount not to exceed $650,000 with the option to extend for two additional one-year terms. Rates adjusted annually in accordance with the Consumer Price Index.

15

Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Wahid Amiri, Interim Director, Public Works

Subject: Contract: Daupler, Inc. for After-Hours Answering Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with Daupler, Inc. for after-hours answering services in an amount not to exceed $375,000 for a three-year contract, with an option to extend for two additional one-year terms.

FISCAL IMPACTS OF RECOMMENDATION

Funds for after-hours answering services are subject to approval by Council and currently allocated in the following proposed Fiscal Year (FY) 2027 departmental budgets: Public Works (Street Lighting-Fund 142, Zero Waste-Fund 601, Sanitary Sewer Operations Fund 611, Clean Stormwater-Fund 616, Parking Meter Fund 631, Building Purchases and Maintenance-Fund 636, Building Maintenance-Fund 673); Information Technology (IT Cost Allocation-Fund 680); Planning and Development (Certified Unified Program Agency-Fund 622); and Parks, Recreation, and Waterfront (Parks Tax-Fund 138). Funding for future years is subject to appropriation in the Fiscal Years 2028, and 2029 budget based on each department's need for answering services.

CURRENT SITUATION AND ITS EFFECTS

Outside normal business hours, on weekends and holidays, residents and business owners continue to contact the City to report urgent requests such as sewer problems, flooding, fallen tree limbs, broken traffic signals, hazardous material situations, and environmental health issues. Additionally, due to state regulations from organizations like the State Water Resources Control Board, the City needs these services to quickly respond to urgent issues that may cause damage to the environment and lead to major penalties being levied against the City. The City does not have staffing outside of normal business hours to provide customer service calls through its 311 Team, so an after-hours answering service contract is needed. This contract also provides daytime coverage to the Information Technology's 311 Customer Service Division so staff can attend trainings and key department meetings.

This proposed contract would provide after-hours answering services for Departments of Public Works; Parks, Recreation and Waterfront; Department of Planning & Development Toxics Management Division; and Health, Housing and Community Services.

The City conducted Request for Proposals Specification No. 25-11694-C, released on January 13, 2026, with proposals due no later than March 17, 2026, and received eleven proposals. The selection committee, composed of subject matter experts from Public Works and Information Technology (IT), evaluated all proposals.

The evaluation criteria used to rate the proposals were as follows: Management and Operational Plan (20%), Service Delivery Plan (20%), Expertise, Bid Quality & References (30%), Cost (15%) and Organizational Experience (15%). The committee also interviewed the four of the highest scoring vendors as part of the assessment. Daupler, Inc. was selected as the most responsive bidders to the solicitation.

This contract will support the City's after-hours services and is in alignment with the City's Strategic Plan, advancing our goal to create a resilient, safe, connected, and prepared city.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code Section 3504.1, as amended by AB 339. This project does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

BACKGROUND

The City has utilized after-hours answering services for many years as it was not cost effective to provide phone coverage by City staff for urgent calls it receives after normal business hours. When the City's current provider for after-hours answering receives a call, it contacts the on-call assigned City staff to respond to the request for service. Non-emergency calls are recorded, and appropriate departments are notified by email the next business day.

The City last released a solicitation for these services back in 2014, and to follow current City procurement policies, a new solicitation was released.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Having an answering service to handle after-hours calls allows City staff to respond quickly to a variety of operational needs such as hazardous materials spills, sewer problems, or other issues that could be harmful to the environment.

RATIONALE FOR RECOMMENDATION

These services are needed to provide residents and local businesses with the support they need outside of normal City business hours.

ALTERNATIVE ACTIONS CONSIDERED
If the contract for these services is not approved, the City would be unable to properly respond to issues that could harm residents and lead to major fines from state agencies.

CONTACT PERSON
Wahid Amiri, Interim Director, Public Works, (510) 981-6396
Joy Brown, Interim Deputy Director, Public Works, (510) 981-6629
Tucker Brofft, Senior Management Analyst, Public Works, (510) 981-5375
Erika Barros, Associate Management Analyst, Public Works, (510) 981-6462
Penny Cash, 311 Customer Service Manager, Information Technology, (510) 981-6543

Attachments:
Resolution
BID Document

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

CONTRACT: DAUPLER, INC. FOR AFTER-HOURS ANSWERING SERVICES

WHEREAS, the City needs an after-hours answering service to provide support to the City after normal business hours, holidays and on weekends; and

WHEREAS, this service helps residents and businesses who need to contact the City to report urgent requests that impact residents and City operations; and

WHEREAS, the City conducted RFP Solicitation No. 25-11694-C with bids due no later than March 17, 2026; and

WHEREAS, the City received eleven proposals and a selection committee, composed of subject matter experts from the department of Public Works and Information Technology, evaluated the bids; and

WHEREAS, Daupler, Inc., was selected as the most responsive vendor to the RFP; and

WHEREAS, funding in the amount of $375,000 is available in the Streetlight Assessment (142) Fund, Zero Waste (601) Fund, Sanitary Sewer (611) Fund, Clean Storm Water (616) Fund, Parking Meter (631) Fund, Building Management (636) Fund, and Building Maintenance (673) Fund; and

WHEREAS, funding will be provided in proportional amounts by Information Technology Budget (Fund 680) Planning Budget (Fund 622), and Parks, Recreation, and Waterfront Budget (Fund 138); and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract with Daupler, Inc. for after-hours answering services in an amount not to exceed $375,000 for a three-year contract, with an option to extend for two additional one-year terms.

Finance Department
General Services Division

City of Berkeley

FOR: After Hours Answering Service

Spec. # 25-11694-C

Bid Date: 3/17/2026

	Bidders		Local Vendor	WC	NF	OS	SC	LW	EBO
1	Responsive Answering Service			X	X	X	X	X	X
2	Direct Interactions Inc			X	X	X	X	X	X
3	AnswerNet			X	X	X	X	X	X
4	Aureon								
5	Daupler			X	X	X	X	X	X
6	McGhee & Associates								
7	DirectLine		X	X	X	X	X	X	X
8	BuildWealthFromHome			X	X	X	X	X	X
9	IdeasUnlimited								
10	USA Notify				X	X	X	X	X
11	Gilson PW Call Center			X	X	X	X	X	X

Bid Recorder: Roop Soorma RSoorma DATE 03/17/2026

Bid Opener: Sherri Degnan Sherri Degnan DATE 03/17/2026

Project Manager: Tucker Brofft/Erika Barros Tucker Brofft DATE 03/24/2026

25-11694-C ABSTRACT

Final Audit Report 2026-03-24

Created:	2026-03-17
By:	Roopreet Soorma (RSoorma@berkeleyca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAPF0JKUw3leOjcq-Fhesx1dSs7UM-qA6K

"25-11694-C ABSTRACT" History

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Agreement completed.
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16

Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Wahid Amiri, Interim Director, Public Works

Subject: Purchase Order: National Auto Fleet Group for Chevrolet Silverado Electric Trucks

RECOMMENDATION
Adopt a Resolution authorizing the City Manager to execute a purchase order with National Auto Fleet Group for ten all electric Chevrolet Silverado Trucks in an amount not to exceed $790,000.

FISCAL IMPACTS OF RECOMMENDATION
The FY27 Adopted Public Works Department Equipment Replacement Fund (Fund 671) budget includes funding for the replacement of these vehicles as they have been fully amortized. Additionally, this purchase may be eligible for rebates of $7,500 per vehicle from the California Clean Fuel Reward program through the California Air Resources Board.

CURRENT SITUATION AND ITS EFFECTS
Ten Parks, Recreation, and Waterfront trucks, Equipment Numbers 3129, 3130, 3132, 3133, 3137, 3247, 3248, 3249, 3140, 3100 are all Ford F-250s trucks that are past due for replacement and are at the end of their useful life.

With this purchase, ten fully electric trucks with the necessary upfitting will replace existing renewable diesel trucks. The replacement vehicles are needed by the Landscaping Division in their work to maintain the City's parks and medians.

These purchases support the Strategic Plan Priority of advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND
The City Charter allows the City to purchase goods without undergoing a competitive bid process if the City utilizes pricing obtained by another entity through a competitive process. On June 25, 2025, Sourcewell released request for proposal 081325 for Automobiles, SUVs, Vans, and Light Trucks with Related Equipment and Accessories. The solicitation was released for approximately 49 days, and 62 proposals were submitted. Upon review of proposals, the Sourcewell Proposal Evaluation Committee

selected 72 Hour LLC, DBA National Auto Fleet Group as one of the most responsive proposers to meet the specifications thusly awarding National Auto Fleet Group Contract #081325-NAF.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City prioritizes procuring the most environmentally clean, most efficient vehicles available and will continue transitioning toward an all-electric fleet, where technically feasible. At the Corporation Yard, it is anticipated that the installation of 11 additional chargers will be completed by December 2026. Additional charging infrastructure at the Corporation Yard is anticipated to be completed in FY28.

RATIONALE FOR RECOMMENDATION

City Fleet vehicles must be replaced on a reasonable schedule to ensure that the staff can safely, effectively, and efficiently carry out their duties. Additionally, this purchase will support the City's overall compliance with the Advanced Clean Fleet regulations.

ALTERNATIVE ACTIONS CONSIDERED

None. Listed vehicles have reached the end of their useful life and are being replaced with all electric vehicles.

CONTACT PERSON

Wahid Amiri, Interim Director, Public Works, 510-981-6396
Joy Brown, Interim Deputy Director, Public Works, 510-981-6629
Melissa Parker, Senior Supervisor, Parks, Recreation, Waterfront, 510-981-6660
Donald Colbert, Senior Supervisor, Public Works, 510-981-6467

Attachment:
1: Resolution

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

PURCHASE ORDER: NATIONAL AUTO FLEET GROUP FOR CHEVROLET SILVERADO ELECTRIC TRUCKS

WHEREAS, Chevrolet Silverado electric trucks are needed by the Parks, Recreation, and Waterfront, Landscape Division to replace existing vehicles that have reached the end of their useful life; and

WHEREAS, the Chevrolet Silverado is the only available electric truck that will meet the needs of the Landscape Division after the discontinuation of the Ford Lightning; and

WHEREAS, vehicles must be replaced on a reasonable schedule to allow City employees to carry out their duties in a safe and effective manner; and

WHEREAS, on June 25, 2025, Sourcewell released request for proposal 081325 for Automobiles, SUVs, Vans, and Light Trucks with Related Equipment and Accessories and the Sourcewell Proposal Evaluation Committee selected 72 Hour LLC, DBA National Auto Fleet Group as one of the most responsive proposers to meet the specifications thusly awarding National Auto Fleet Group Contract #081325-NAF; and

WHEREAS, the Sourcewell contract bid procedures, selection, and contract with 72 Hour LLC, DBA National Auto Fleet Group satisfy the procurement requirements of the City; and

WHEREAS, funds in the amount of $790,000 are available in the adopted FY 2027 budget in the Equipment Replacement Fund (671).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order(s) with 72 Hour LLC, DBA National Auto Fleet Group for up to ten electric Chevrolet Silverado Work Trucks in the amount not to exceed $790,000.

17

Office of the City Manager

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Wahid Amiri, Interim Director, Public Works

Subject: Purchase Order: Turf Star, Inc. for GO-4 Parking Enforcement Vehicles

RECOMMENDATION
Adopt a Resolution authorizing the City Manager to execute a purchase order with Turf Star, Inc. for nine GO-4 Parking Enforcement Vehicles in an amount not to exceed $550,000.

FISCAL IMPACTS OF RECOMMENDATION
The FY27 Adopted Public Works Department Equipment Replacement Fund (Fund 671) budget includes funding for the replacement of these vehicles as they have been fully amortized.

CURRENT SITUATION AND ITS EFFECTS
Nine Parking Enforcement Vehicles, Equipment Numbers 1414, 1415, 1416, 1417,1419, 1420, 1421, 1422, and 1426 need replacement as they are at the end of their useful life, parts are failing, and there is damage due to collisions. Assets are needed by the City's Parking Enforcement staff for patrolling residential, business, and parking permitted locations within the City to ensure adherence to local regulations and state vehicle code laws.

These purchases support the Strategic Plan Priority of advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND
The City Charter allows the City to purchase goods without undergoing a competitive bid process if the City utilizes pricing obtained by another entity through a competitive process. On July 23, 2024, Sourcewell released request for proposal 091024 for Utility, Transport, Golf, and Recreation Vehicles with Related Accessories, Equipment, and Services. The solicitation was released for approximately 50 days, and 17 proposals were submitted. Upon review of proposals, the Sourcewell Proposal Evaluation Committee selected Westward Industries as the best, most responsive proposer to meet the specifications thusly awarding Westward Industries Contract # 091024-WWI

Westward Industries partners with regional distributors to manage sales through the Sourcewell contract. Turf Star, Inc. represents Westward Industries in California.

Public Works purchases vehicles and equipment via cooperative contracts to ensure competitive pricing. These vehicles are specialized and require specialized equipment and installation. Once the new GO-4s have arrived, the vehicles that are being replaced will be sent to auction. Auction proceeds are returned to the Equipment Maintenance Fund to support future vehicle purchases and administrative costs.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City prioritizes procuring the most environmentally clean, most efficient vehicles available and will continue transitioning toward an all-electric fleet, where technically feasible. The GO-4s have a 1.0 liter gasoline engine that averages 45 miles per gallon and meet all current state, federal, emissions regulations.

The Traffic Division is located at 125 & 127 University Avenue and does not have sufficient existing electric charging infrastructure. Additional electric vehicle purchases at this time would significantly impact overall parking enforcement operations.

It is anticipated that the next planned replacement GO-4s in fiscal year 2029 will be all electric to align with the installation of chargers at the Traffic Division.

RATIONALE FOR RECOMMENDATION

Police Department parking enforcement vehicles must be replaced on a reasonable schedule to ensure Parking Enforcement Officers can safely, effectively and efficiently carry out their duties.

ALTERNATIVE ACTIONS CONSIDERED

None. Listed vehicles have reached the end of their useful life.

CONTACT PERSON

Wahid Amiri, Interim Director, Public Works, 510-981-6396
Joy Brown, Interim Deputy Director, Public Works, 510-981-6629
Daniel Montgomery, Lieutenant, Police, 510-981-5868
Donald Colbert, Senior Supervisor, Public Works, 510-981-6467

Attachment:
1: Resolution

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

PURCHASE ORDER: TURF STAR FOR NINE 2026 MODEL GO-4 PARKING ENFORCEMENT VEHICLES

WHEREAS, nine GO-4 Parking Enforcement Vehicles are needed by the Berkeley Police Department to replace existing vehicles that have reached the end of their useful life; and

WHEREAS, the GO-4 parking enforcement vehicle is the preferred parking enforcement vehicle for many cities because of its maneuverability through city street, good visibility, and driver safety features; and

WHEREAS, vehicles must be replaced on a reasonable schedule to allow City employees to carry out their duties in a safe and effective manner; and

WHEREAS, Turf Star partners with regional distributors to effectuate sales through the Sourcewell contract. Within the City of Berkeley, Turf Star Incorporated represents the Westward Industries brand; and

WHEREAS, the Sourcewell contract bid procedures satisfy the procurement requirements of the City; and

WHEREAS, funds in the amount of $550,000 are available in the adopted FY 2027 budget in the Equipment Replacement Fund (671).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order with Turf Star Incorporated for nine 2026 GO-4 Parking Enforcement Vehicles, in an amount not to exceed $550,000.

BEN BARTLETT
CITY COUNCILMEMBER, DISTRICT 3

18

CONSENT CALENDAR

July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author)

Subject: Bertha Brown Community Memorial Gathering and Hunger Program Recognition – Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION:

Adopt a Resolution approving the expenditure of funds, including $1,000 from the discretionary Council Office Budget of Councilmember Ben Bartlett for the South Berkeley Community Church Hunger Program Community Memorial Gathering honoring Bertha Brown and associated accessibility services. The funds will be relinquished to the City's General Fund from the Discretionary Council Office Budget of Councilmember Ben Bartlett and the Discretionary Council Office Budgets of any other Councilmembers who would like to contribute.

BACKGROUND:

Bertha Brown was a lifelong Berkeley resident who dedicated decades of service to the Berkeley community. She lived in Berkeley for more than 65 years and worked for the City of Berkeley Parks, Recreation, and Waterfront Department for over 30 years. During her career, she developed and expanded youth, recreation, and early childhood programs that continue to serve Berkeley families today.

As Recreation Coordinator at Frances Albrier Community Center, Bertha Brown helped create programs for young children and families and secured grant funding to support them. She dedicated her career to improving the lives of Berkeley residents. Following her retirement in 2019, she continued serving the community through volunteer work, including supporting the Hunger Program at South Berkeley Community Church.

2180 Milvia Street, Berkeley, Floor 5, CA 94704 ● Tel: (510) 981-7130 ● E-Mail: bbartlett@cityofberkeley.info

Sadly on June 4, 2026, Bertha Brown passed away.

In recognition of Bertha's years of public service, South Berkeley Community Church's Hunger Program will host a community gathering and memorial celebration on July 25, 2026.

The D13 funds will help offset the cost of facility and accessibility services, specifically American Sign Language interpretation, to ensure community members can participate in honoring her life and legacy.

ENVIRONMENTAL SUSTAINABILITY:

No negative impact.

FISCAL IMPACTS OF RECOMMENDATION

There is no impact on the General Fund; $1,000 is available from Councilmember Ben Bartlett's discretionary council office budget of Councilmember Ben Bartlett.

CONTACT PERSON:

Councilmember Ben Bartlett bbartlett@cityofberkeley.info
James Chang jchang@cityofberkeley.info

ATTACHMENTS:

1. Draft Resolution
2. Bertha Brown Obituary

Attachment 1:

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

AUTHORIZE THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCIL MEMBERS FOR A DONATION TO THE SOUTH BERKELEY COMMUNITY CHURCH HUNGER PROGRAM COMMUNITY MEMORIAL GATHERING HONORING BERTHA BROWN

WHEREAS, Councilmember Ben Bartlett has funds in his office expenditure account, and

WHEREAS, South Berkeley Community Church Hunger Program will receive funds from Councilmember Ben Bartlett's office expenditure account; and

WHEREAS, Bertha Brown was a longtime Berkeley resident and public servant who worked for the City of Berkeley for more than 30 years serving youth, families, and community members through recreation, education, and volunteer programs; and

WHEREAS, Bertha Brown served her community through volunteering with the South Berkeley Community Church Hunger Program by supporting residents experiencing food insecurity; and

WHEREAS, the South Berkeley Community Church Hunger Program Community Memorial Gathering will bring together Berkeley residents, City staff, family members, and volunteers to celebrate Bertha Brown's legacy of public service, plus providing accessibility through American Sign Language interpretation; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their office budgets, of an amount to be determined by each Councilmember, shall be granted to the South Berkeley Community Church Hunger Program Community Memorial Gathering honoring Bertha Brown.

Attachment 2:

Bertha Brown, age 76, of Berkeley, CA, passed away peacefully on June 4, 2026 surrounded by her loving family. She was born in San Diego on January 24, 1950, she was the beloved and only daughter of Wilma Brown.

As a young girl the family moved to Berkeley, CA, a place she loved and lived for over 65 years. Graduating from Berkeley High and attending some college, Bertha went on to work for the City of Berkeley, Parks & Recreation for over 30 years. She was initially recruited to put on a talent show at the Young Adult Project and this is how her career with the City of Berkeley started. As the dance coordinator for the B-Town dancers, what started out as a dance group progressed into performances and positive messaging around South Berkeley. She wrote and recorded a song encouraging anti-violence and health safety performed throughout Berkeley schools. The B-Town dancers ended every performance with this message, “Don’t be stupid, don’t be ill, remember it’s simple drugs and AIDS kill, peace.”

As a Recreation Activities Leader, she worked with the Teen Club taking them to Friday Night Live events including New Year’s Eve lock-in’s and boat ride dances. She was promoted to Recreation Coordinator and excelled in this position at Frances Albrier Community Center at San Pablo Park. Becoming a first time grandmother, she saw that while the kids and teenagers had programs targeted towards them, there weren't any programs for the toddlers. An idea was born, cultivated and executed and Tot’s Around Town and Pre-K programs were developed for the different Parks & Recreation sites around Berkeley. She wrote a grant to secure funding for these programs which are still thriving to this day. This accomplishment is one that she was truly proud of. She eventually retired in 2019, faithfully dedicating her time providing treats to the dogs in the community and strengthening her relationship with God.

Bertha was a lover of the arts, she enjoyed dancing, plays, movies, and music. Anyone who knows her, knows how much she loved Michael Jackson. She put on a dance extravaganza to raise money to take the B-Town dancers to a Diana Ross concert, where she encouraged everyone to stand up and dance, eventually being noticed, the B-Town dancers were called on stage and asked to perform with Diana Ross. This was a full circle moment for Bertha. Throughout the years, she would coordinate the staff dances for the end of the summer program. Something that everyone looked forward to seeing. With this same spirit, she would teach her granddaughters the dance routines to Michael Jackson's songs.

Bertha leaves to cherish her memory her three daughters, Ayanna Durio, Larez Davenport, and Deonna Sayles. Her son's in-law, Tarik and Darrell Brown. Her two brothers, Homer (Kermit) Gordon, and Paul Brown; one sister in law Cathy Gordon. She was a phenomenal grandmother to her four beloved grandchildren Laila, Aquila, Zahra, and Tarik Muwakkil who affectionately

called her Grammy. Her cherished cat Jacob, and a host of family and friends. She was preceded in death by her mother, Wilma Brown and two brothers, Tony and Michael Brown.

19

Igor Tregub, Councilmember District 4

CONSENT CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmember Igor Tregub (Author)

Subject: Adopt a Position of Opposition to ACA 22, the California Two-Thirds Vote Requirement for Special Taxes.

RECOMMENDATION

Adopt a position in opposition to Assembly Constitutional Amendment (ACA) 22, which would restrict how local governments may adopt certain taxes and distribute copies of a letter of opposition to Governor Gavin Newsom, Senator Jesse Arreguín, Assemblymember Buffy Wicks, and applicable Senate and Assembly Committees.

BACKGROUND

Currently, the California Constitution conditions the imposition of a special tax by a local government upon the approval of 2/3 of the voters of the local government voting on that tax and prohibits these entities from imposing an ad valorem tax on real property or a transactions or sales tax on the sale of real property.

The "Upland loophole" is a legal loophole in California created by the 2017 California Supreme Court decision in California Cannabis Coalition v. City of Upland. It allows local tax increases placed on the ballot via citizen-led initiatives to pass with a simple majority (50% + 1) instead of the two-thirds (66.7%) supermajority normally required for special taxes.[1]
Initiative 25-0006A1, titled the “Local Taxpayer Protection Act to Save Proposition 13,” was submitted and received the signatures necessary to qualify for placement on the

[1] https://calmatters.org/commentary/2025/10/local-tax-measures-return-ballot/

November 2026 statewide ballot. The measure would have amended the California Constitution to significantly restrict local government authority to adopt and maintain certain local taxes. Specifically, the initiative would require all local special taxes to receive two-thirds voter approval; prohibit local governments from imposing most taxes related to real property, including property transfer taxes; and invalidate existing taxes that do not comply with the initiative's proposed constitutional requirements.

If that measure remained on the ballot and was approved by the voters, it would have had significant fiscal consequences for local governments throughout California. Fiscal analyses prepared by local government organizations estimated annual statewide revenue losses of approximately $2 billion to $3 billion beginning two years after enactment. Cal Cities was on record opposing this harmful measure. The Legislative Analyst's Office similarly projects annual local government revenue reductions of up to $2 billion, largely due to the invalidation of locally adopted property transfer taxes and parcel taxes that were approved under existing constitutional and statutory requirements.[2]

A compromise struck in late June 2026, just before the deadline to finalize state ballot measures, included removing the Initiative 25-0006A1 from the ballot and replacing it with ACA 22, a measure that now asks California voters to close the Upland loophole. Additionally, the compromise required the legislature to also pull ACA 13 from the ballot, a poison pill measure passed by the legislature in 2024 that, if passed by voters, would have required any measure seeking a higher vote threshold, to also pass by that higher vote threshold. The agreement does not include changes to local real property transfer taxes.

If placed on the November 2026 ballot and is approved by voters, ACA 22 would, beginning January 1, 2027, prohibit a local government, including the electorate of a local government exercising the initiative power, from imposing, extending, or increasing any special tax, except as provided, unless and until that tax is submitted to the electorate and approved by a 2/3 vote. The measure would prohibit a local government, including the electorate of a local government exercising the initiative power, from imposing ad valorem taxes on real property, except as provided pursuant to specified constitutional provisions. This bill contains other related provisions and other existing laws.[3]

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[2] https://oag.ca.gov/system/files/initiatives/pdfs/fiscal-impact-estimate-report%2825-0006A1%29.pdf
[3] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260ACA22

At a time when local governments continue to face increasing costs associated with public safety, homelessness response, infrastructure maintenance, affordable housing production, and climate resilience, ACA 22, while responsive to an agreement with the proponent of Initiative 25-0006A1 and therefore not as detrimental, would still significantly constrain local fiscal flexibility. Revenue losses would be difficult to absorb without reducing services or delaying investments that residents rely upon. The City of Berkeley is concerned that the initiative would prevent new revenue from being created and create substantial uncertainty regarding long-term municipal budgeting and service delivery.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley is likely to be detrimentally impacted by the provisions of ACA-22 if approved by the voters. Berkeley voters have historically exercised their local authority to approve revenue measures that fund essential municipal services and community priorities. These efforts would be frustrated by certain provisions of this measure if enacted.

Adoption of this measure will cause long-term financial planning disruptions and reduce the City's ability to deliver basic services and respond to evolving community needs. For reasons similar to opposing Initiative 25-0006A1[4], the City of Berkeley should oppose ACA 22 and support preserving local authority to maintain voter-approved revenue sources that fund essential public services and community priorities.

The measure could also reduce flexibility for future electorates by substantially increasing the threshold required to place tax modifications before voters. Requiring signatures from two-thirds of the electorate, rather than 50%, would place a considerable burden on residents and may unnecessarily constrain the exercise of local direct democracy.

FINANCIAL IMPLICATIONS

Minimal staff time is associated with outreach to recipients regarding the City's position on ACA 22.

If enacted, ACA 22 could have substantial long-term fiscal implications for the City of Berkeley by reducing or eliminating locally approved revenue sources that support municipal operations and capital investments. The precise fiscal impact would depend

[4] An item to oppose this initiative was submitted to the Berkeley City Council Agenda and Rules Committee prior to the initiative's removal from the ballot.

on implementation, legal interpretation, and the extent to which existing local revenue measures are affected.

ENVIRONMENTAL SUSTAINABILITY

The City of Berkeley relies on locally controlled revenues to support environmental sustainability initiatives, climate action programs, infrastructure maintenance, urban forestry, parks, and resilience investments. Preserving local fiscal authority helps ensure that the City can continue implementing environmental programs and infrastructure improvements necessary to advance community sustainability goals and respond to climate-related challenges.

CONTACT PERSON

Councilmember Igor Tregub, 510-981-7140, itregub@berkeleyca.gov

Olga Bolotina, Chief of Staff, obolotina@berkeleyca.gov

Amy Johnson, Legislative Aide, amjohnson@berkeleyca.gov

ATTACHMENTS

1. Proposed Language for Letter of Opposition

Berkeley City Council
2180 Milvia Street, 5th Floor
Berkeley, CA 94704

July 14, 2026

RE: Notice of OPPOSITION to ACA 22

Dear Governor Newsom, Senator Jesse Arreguín, and Assemblymember Buffy Wicks,

The City of Berkeley respectfully **opposes** ACA 22. The City of Berkeley is grateful to the State legislature for negotiating a substantively less harmful to the cities measure compared to Initiative 25-0006A1. However, we urge the Legislature to recognize the significant threat the newly proposed measure poses to city fiscal stability, local voter-approved revenues, and the essential services Californians rely on daily.

Requiring all local special taxes to receive two-thirds voter approval would place a significant burden on local government and electorate. While the fiscal consequences for the cities might not be as severe as from that of Initiative 25-0006A1 millions of dollars in local government revenues could be lost, if two-thirds voter approval is instituted across California.

The City of Berkeley would be directly affected by ACA 22 because it would invalidate or severely restrict voter-approved revenue measures that fund essential municipal services and community priorities. The City of Berkeley is deeply concerned that the measure would disrupt long-term planning for public services and capital investments, hire employees, and maintain infrastructure.

As a result, Berkeley could lose tens of millions of dollars annually in locally approved revenues beginning in Fiscal Year 2028, including funding for homelessness services, public safety, infrastructure, and other community priorities. Such a significant loss would undermine local voter decisions, disrupt long-term financial planning, and reduce the City's ability to respond to evolving community needs.

At a time when cities are facing rising costs, increasing service demands, infrastructure needs, housing and homelessness challenges, and public safety obligations, the provisions on ACA 22 would significantly restrict local fiscal flexibility.

This measure would undermine the electorate's freedom to shape local tax policy by making it substantially more difficult for voters to amend or repeal existing taxes. By increasing the signature requirement from 50% to two thirds of the electorate, it places an undue burden on residents seeking to exercise their right to direct democracy.

For these reasons, City of Berkeley strongly opposes ACA 22. We urge that any legislative or executive discussion related to this measure, or local revenue authority include meaningful engagement with cities before any proposal moves forward that could permanently alter local fiscal authority or threaten the services Californians depend on.

Sincerely,

City of Berkeley Council

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Igor Tregub, Councilmember District 4

CONSENT CALENDAR

July 14th, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmember Igor Tregub (Author)

Subject: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds to support of the Raising the Next Generation of Student Advocates (RISE) Program

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember from the D13 Discretionary Accounts of members of the Berkeley City Council, including a contribution of $250 from Councilmember Igor Tregub, and inviting additional Councilmembers to contribute, to support the Berkeley Public Schools Fund's RISE (Raising the Next Generation of Student Advocates) program.

BACKGROUND

The Berkeley Public Schools Fund RISE (Raising the Next Generation of Student Advocates) program supports youth leadership, civic engagement, and student advocacy initiatives across Berkeley schools, with a strong focus on equity and access for students who have historically been underserved.

The program provides students many of whom are first-generation youth going to college, low-income students, and students navigating significant personal and systemic challenges, with opportunities to develop leadership skills, elevate student voice, and participate in meaningful projects that strengthen their schools and communities.

Through mentorship, advocacy training, and student-led initiatives, RISE helps young people build confidence, civic awareness, and practical leadership experience, while fostering pathways for long-term educational and personal success.

CURRENT SITUATION AND ITS EFFECTS

The RISE program operates without a dedicated budget line for program expenses and does not have stable or sufficient funding to support basic student-facing needs. As a result, program staff and students rely on informal fundraising and outside contributions to sustain programming and cover essential costs.

Even modest expenses, such as graduation recognition materials, cannot be covered through program funds and must instead be covered by students. For example, students were required to fundraise for graduation sashes totaling $595.76 for 30 sashes due to the absence of allocated program funding.

This lack of consistent funding places ongoing strain on both students and staff. Many of the youth served by the program are facing significant life challenges, including housing instability, loss of family support, and other traumatic circumstances. Despite this, the program serves as a critical source of stability, mentorship, and support.

Without additional resources, RISE is limited in its ability to consistently provide student leadership opportunities, recognition, and basic program support aligned with its mission.

FINANCIAL IMPLICATIONS

No impact to the General Fund. Contributions of up to $250 per participating members of the Berkeley City Council will come from existing Council Office Budget discretionary accounts.

CONTACT PERSON

Councilmember Igor Tregub | itregub@berkeleyca.gov | 510-981-7140

Olga Bolotina | Chief of Staff, Council District 4 | obolotina@berkeleyca.gov

Shamaila Ahmed | Legislative Aide | sahmed@berkeleyca.gov

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Office of the City Manager

PUBLIC HEARING
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront

Subject: Lease Agreement: International Child Resource Institute (ICRI) for 125-127 University Avenue Office Space

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance executing a five-year lease agreement with International Child Resource Institute to lease second floor office space located at 125-127 University Ave in the Berkeley Waterfront. The lease term is anticipated to begin September 1, 2026, and end August 31, 2031.

FISCAL IMPACTS OF RECOMMENDATION

ICRI will pay a monthly rent of $4,370, escalating 3% annually. This new rent reflects the rate of other comparable West Berkeley office spaces at $2.50 per square foot per month, based on a market study conducted by City staff in 2025. The property is on State tidelands held in trust by the City and is required by the State Lands Commission to be rented at market rate. ICRI's current rent has not increased since 2014, which is currently set at $3,059 per month ($1.75/square foot/month).

Additionally, ICRI will repay $39,767 of unpaid rent from their previous lease. The unpaid rent is from the COVID-19 emergency period. ICRI will repay the amount in graduated monthly installments over the five-year term of the lease. No interest will be charged on this amount, consistent with the terms of the COVID-19 Emergency Response Ordinance (Ordinance No. 7,743-N.S.).

This five-year lease will generate $318,177.96 in revenue. Funds from this lease will be deposited into the Marina Fund revenue account budget code 608-52-544-592-0000-000-000-461120-.

CURRENT SITUATION AND ITS EFFECTS

The City proposes to execute a new five-year lease with ICRI for 1,748 square feet of office space at 125-127 University Avenue. ICRI has been a tenant of 125-127 University Avenue prior to the building reverting to City ownership in 2014, at which point they entered into a three-year lease agreement with the City (Ordinance No. 7,363-N.S.). ICRI's lease expired on July 31, 2017, and is currently in holdover.

The building is located on State tidelands held by the City of Berkeley in trust for the promotion of commerce, navigation, and fishery ("public trust uses"). The State Lands Commission requires City staff to market the office space to public trust use-aligned organizations whenever a property becomes vacant or when leases are due for renewal. Two public trust use organizations expressed interest: one organization is in negotiation for a different office suite in the same building, while the other organization's space needs were incongruent with the building's office setup.

In the event that City staff is unable to find a public trust use tenant, the State Lands Commission determined that it would be financially and operationally prudent for the City to lease to a non-public trust use for short-term leases of five years or less. City staff proceeded with negotiating new lease terms with ICRI once no additional public trust use organizations expressed interest in the space.

BACKGROUND

ICRI is a global non-profit organization whose mission includes prioritizing early childhood care and education and advocating for children's rights, among other child- and community-centered work.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed lease contains a requirement that tenants shall follow all environmental rules and regulations as they apply to City agencies. Specifically, tenants are required to minimize waste, recycle, and compost, as per Recycling and Composting Guidelines for City Buildings.

RATIONALE FOR RECOMMENDATION

If adopted, the revenue generated by this lease will be deposited into the Marina Fund, which depends on berth and lease revenue to support all Waterfront operations.

ALTERNATIVE ACTIONS CONSIDERED

If Council does not adopt the Ordinance, ICRI's lease would continue to remain in holdover. The City would lose additional revenue for the Marina Fund included in this new lease. City staff would also need to relist the office space, which would incur additional costs in advertising and staff time.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6700

Attachments:
1: Ordinance
    Exhibit A: Lease Agreement
2: Public Hearing Notice

ORDINANCE NO. -N.S.

LEASE AGREEMENT: INTERNATIONAL CHILD RESOURCE INSTITUTE (ICRI) FOR OFFICE SPACE AT 125-127 UNIVERSITY AVENUE AT THE BERKELEY WATERFRONT

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

Section 1. FINDINGS:

1. City Council adopted Ordinance No. 7,363-N.S. on July 8, 2014, which authorized the City Manager to enter into a lease agreement with International Child Resource Institute (ICRI) for an office space measuring 1,748 square feet in the southwestern portion of the second floor in the 125-127 University Avenue office building. The lease agreement expired on July 31, 2017. The lease is currently in holdover and the tenant requested to continue leasing the same office space.
2. The 125-127 University Avenue office building is located on State tidelands held in trust by the City of Berkeley for the promotion of commerce, navigation, and fishery ("public trust uses"). City staff marketed the office space to organizations aligned with the public trust uses before negotiating a new lease with ICRI, as required by the State Lands Commission. City staff did not identify a compatible public trust use organization for this specific space and proceeded to negotiate new lease terms with ICRI.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AT 125-127 UNIVERSITY AVENUE.

The City Manager is hereby authorized to enter into a five-year lease agreement with International Child Resource Institute for real property located at 125-127 University Avenue at the Berkeley Waterfront. The rent will be $4,370 per month, escalating 3% annually, and will be deposited in the Marina Fund Budget Code 608-52-544-592-0000-000-000-461120-. Such lease shall be on substantially the terms set forth in Exhibit A.

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.

Exhibit A:
Lease Agreement

OFFICE LEASE

by and between

CITY OF BERKELEY
a California municipal corporation
(as Landlord)

and

International Child Resource Institute
a California non-profit organization
(as Tenant)

Dated: September 1, 2026

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Exhibit A-1	Legal Description of Property
Exhibit A-2	Depiction of the Premises
Exhibit B	Rules and Regulations
Exhibit C	Payment Provision
Exhibit D	Guaranty (not applicable)

OFFICE LEASE

BASIC LEASE INFORMATION

1.	Landlord:	City of Berkeley 2180 Milvia Street Berkeley, CA 94704 Attention: Director, Parks, Recreation & Waterfront Telephone: (510) 981-6704
2.	Tenant:	International Child Resource Institute (ICRI) 125-127 University Avenue Berkeley, CA 94710 Telephone: (510) 644-1000
3.	Tenant Trade Name:	Tenant shall operate under the trade name International Child Resource Institute.
4.	Effective Date:	September 1, 2026
5.	Premises:	Approximately 1,748 rentable square feet comprising the southwestern portion of the 2nd floor ("**Premises**") of the building commonly known and referred to as 125-127 University Avenue, Berkeley, California 94710 (the "**Building**").
6.	Permitted Uses:	General office and ancillary commercial use, subject to any applicable or required approvals from the City of Berkeley.
7.	Initial Term:	Five (5) years, commencing as of September 1, 2026 ("**Commencement Date**").
8.	Base Rent:	$4,370 per month with 3% annual increase
9.	Security Deposit:	$1,000
10.	Guarantor:	Not required with this Lease.
11.	Payment of Deferred Rent:	As provided in Section 4.1.1, Tenant shall repay $39,767.00 in deferred rent in 60 graduated monthly payments starting at $300 per month.

The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. In the event of any conflict between the Basic Lease Information and terms of the Lease, the terms of the Lease shall control.

LANDLORD'S INITIALS _____ TENANT'S INITIALS _____

OFFICE LEASE

This Office Lease ("**Lease**") is made and entered into as of the effective date specified in Section 4 of the Basic Lease Information, above ("**Effective Date**"), by and between the City of Berkeley, a municipal corporation of the State of California ("**Landlord**"), and the tenant identified in Section 2 of the Basic Lease Information ("**Tenant**").

1. PREMISES.

1.1 Premises. Landlord is the owner of that certain Building referred to in Basic Lease Information Section 5, and the underlying land on which the Premises are located as described in Exhibit A-1 attached hereto and incorporated herein (collectively, the "**Property**"). Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises together with Tenant Improvements (defined below), if any. A drawing depicting the general location and layout of the demised Premises is attached hereto and incorporated by reference as Exhibit A-2. Any improvements or alterations existing in the Premises, or otherwise constructed by Tenant or on Tenant's behalf therein (whether under this Lease, or any prior lease or sublease) are referred to in this Lease as "**Tenant Improvements**." Notwithstanding the foregoing, Landlord will not be obligated to deliver possession of the Premises to Tenant (but Tenant will be liable for rent if Landlord can otherwise deliver the Premises to Tenant) until the City Council of Landlord has approved the Lease and Landlord has received from Tenant all of the following: (i) a copy of this Lease fully executed by Tenant and the guaranty of Tenant's obligations under this Lease, if applicable, executed by the Guarantor(s) in the form attached hereto and incorporated by reference as Exhibit D ("**Guaranty**"); (ii) the Security Deposit and the first installment of Base Rent ; and (iii) copies of policies of insurance or certificates thereof as required under this Lease.

1.2 Landlord's Reserved Rights. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except that advance notice shall not be required in case of an emergency) for the following purposes: (i) to inspect the condition of the Premises; (ii) to ascertain the performance by Tenant of the terms and conditions hereof; (iii) to respond to an emergency at the Premises; (iv) to maintain, inspect and repair the Premises to the extent required or permitted under this Lease; (v) to post notices of non-responsibility for alterations, additions or repairs undertaken by Tenant; (vi) to show the Premises to prospective tenants or purchasers or persons acting on their behalf; (vii) to post a leasing sign in or about the Premises; and (viii) to perform any other right or duty of Landlord under this Lease. Landlord may exercise this right of entry without any abatement of Rent to Tenant for any loss of occupancy or quiet enjoyment of the Premises.

2. COMMON AREA.

2.1 Definition of Common Areas. The term "**Common Area**," as used in this Lease, means all areas within the exterior boundaries of the Property now or later made available for the collective general use of Tenant and other persons entitled to occupy space in the Building, including the exterior surfaces and roof of the Building. Common Area shall not include any areas or facilities that could be considered as Common Area except that the areas or facilities are included in the description of premises leased to any other tenant of the Building.

2.2 Maintenance and Use of Common Area. The manner in which the Common Area shall be maintained shall be solely determined by Landlord. The use and occupancy by Tenant of the Premises shall include the right to use the Common Area (except areas used in the maintenance or operation of the Property), in common with Landlord and other tenants of the Property and their customers and invitees, subject to such reasonable, nondiscriminatory rules and regulations concerning the use of the Common Area as may be established by Landlord from time to time. Written notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to Tenant thirty (30) days prior to their effective date. Tenant agrees to promptly comply with all such rules and regulations upon receipt of written notice from Landlord.

2.3 Control of and Changes to Common Area. Landlord shall have the sole and exclusive control of the Common Area, as well as the right to make reasonable changes to the Common Area. Landlord's rights shall include, but shall not be limited to, the right to: (i) restrain the use of the Common Area by unauthorized persons; (ii) cause Tenant to remove or restrain persons from any unauthorized use of the Common Area if they are using the Common Area by reason of Tenant's presence in the Property; (iii) temporarily close any portion of the Common Area for repairs, improvements or alterations, to discourage noncustomer use, to prevent dedication or an easement by prescription, or for any other reason deemed sufficient in Landlord's judgment; and (iv) reasonably change the shape and size of the Common Area, add, eliminate or change the location of improvements to the Common Area. Landlord may determine the nature, size and extent of the Common Area, as well as make changes to the Common Area from time to time which, in Landlord's opinion, are deemed desirable for the Property.

3. TERM.

3.1 Term; Commencement Date. The "**Initial Term**" of this Lease shall be as set forth in Section 7 of the Basic Lease Information and shall commence as of the Commencement Date set forth in Section 7 of the Basic Lease Information. The Initial Term together with the Extension Term(s), if any, are collectively referred to herein as the "**Term**."

4. RENT; SECURITY DEPOSIT.

4.1 Base Rent; Rent. All Rent under this Lease shall commence as of the Commencement Date. Rent shall be paid as set forth in this Section 4. Tenant shall pay to Landlord, at Landlord's address for payment of Rent designated in Section 1 of the Basic Lease Information, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Rent, the Base Rent designated in Section 8 of the Basic Lease Information, without notice, demand, offset or deduction, in advance, on the first day of each month of the Term. Upon execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent. If Base Rent is due for a period of less than a full month, it shall be prorated for such partial month on the basis of a thirty (30) day month. The term "Rent" means the Base Rent and any other amounts of any kind that become due and payable by Tenant to Landlord under this Lease, including deferred rent payments set forth in Section 4.1.1. The total monthly and annual rent owed is set forth in Exhibit C. Tenant's obligation to pay Rent under this Lease survives the Term to the extent such obligation has not been fulfilled during the Term.

4.1.1 Payment of Deferred Rent. Tenant and Landlord agree that $39,767 in deferred rent that was unpaid during the prior lease due to the COVID-19 pandemic will be repaid in graduated monthly payments over the term of the lease as outlined in the table below. Payments will be due with each monthly Base Rent payment. No interest will be charged on the payment of deferred rent except as set forth in Section 4.3, if payments are not received according to the schedule set forth below.

Lease Year	Monthly Deferred Rent Payment	Total Annual Deferred Rent Payment
Sep 2026-Aug 2027	$300.00	$3,600.00
Sep 2027-Aug 2028	$500.00	$6,000.00
Sep 2028-Aug 2029	$700.00	$8,400.00
Sep 2029-Aug 2030	$900.00	$10,800.00
Sep 2030-Aug 2031	$913.92	$10,967.00
	Total Repaid:	**$39,767.00**

4.2 Application of Payments. All payments received by Landlord from Tenant shall be applied to the oldest obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing, on a check or money order, or otherwise shall modify this clause or have any force or effect.

4.3 Late Charge and Interest. The late payment of any Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses ("**Delinquency Costs**"). If Landlord has not received any installment of Rent within five (5) business days after such amount is due, Tenant shall pay a late charge of ten percent (10%) of the delinquent amount immediately. The ten percent (10%) late charge represents a reasonable estimate of the Delinquency Costs incurred by Landlord. In addition, all such delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum ("**Applicable Interest Rate**") equal to the lesser of (i) the maximum interest rate permitted by Law, or (ii) five percent (5%) above the rate publicly announced by Bank of America, N.A. (or if Bank of America, N.A. ceases to exist, the largest bank then headquartered in the State of California) ("**Bank**") as its "**Reference Rate**." If the use of the announced Reference Rate is discontinued by the Bank, then the term Reference Rate shall mean the announced rate charged by the Bank which is, from time to time, substituted for the Reference Rate. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant's failure to pay such amounts is difficult to ascertain and said late charge and interest are the best estimate of the damage which Landlord shall suffer in the event of late payment. Landlord's acceptance of late Rent, partial Rent and late charges does not equate with a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any rights and remedies available under this Lease and/or by operation of Law.

4.4 Security Deposit. The cash sum specified under Section 9 of the Basic Lease Information, if any, shall be deposited with Landlord concurrently with Tenant's execution of this Lease ("**Security Deposit**"). Landlord shall hold the Security Deposit as security for the performance of Tenant's obligations under this Lease. Tenant is not entitled to any interest on the Security Deposit and Landlord shall not be liable therefor. If Tenant defaults on any provision of this Lease, Landlord may, at its election and without prejudice to any remedy it has under this Lease or by operation of Law, apply all or part of the Security Deposit to: (i) Rent or other sum in default; (ii) any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under this Lease; (iii) unamortized costs of improvements paid for by Landlord, if any; (iv) unamortized costs of brokerage commissions, if any; or (v) any expense, loss or damage that Landlord may suffer because of Tenant's default. Tenant waives the provisions of California Civil Code section 1950.7, and all Laws in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant, or to clean the Premises. Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant, or of Tenant's officers, agents, employees, independent contractors, invitees, customers, licensees, assignees or subtenants (individually and collectively, "**Tenant's Parties**").

4.5 Restoration of Security Deposit; Return of Security Deposit. If Landlord applies any portion of the Security Deposit during the Term, Tenant shall, within ten (10) days after demand by Landlord, deposit with Landlord an amount sufficient to restore the Security Deposit to its original amount. If Tenant performs every provision of this Lease to be performed by Tenant, the unused portion of the Security Deposit, if any, shall be returned to Tenant or the last assignee of Tenant's interest under this Lease within thirty (30) days following the expiration or termination of the Term.

4.6 Transfer of Security Deposit; Assignment or Encumbrance of Security Deposit. If Landlord disposes of its interest in the Premises, Landlord may deliver the remaining Security Deposit to Landlord's successor in interest in the Premises and thereupon be relieved of further responsibility with respect to the Security Deposit. Tenant may not assign or encumber the Security Deposit without the prior written consent of Landlord. Any attempt to do so shall be void and shall not be binding on Landlord.

5. UTILITIES AND JANITORIAL SERVICES.

5.1 Landlord Utility and Service Costs. Landlord shall be responsible and directly contract and pay for the following utilities and services in connection with Tenant's use or occupancy of the Premises: (i) water; (ii) sewage; (iii) the Landlord janitorial services described in Section 5.2 below; (iv) trash removal; and (v) HVAC (individually and collectively, the "**Landlord Services**").

5.2 Janitorial Services. Landlord shall provide all janitorial services to common areas only. Tenant shall provide and pay for all janitorial services, including supplies and shampooing carpets, to the Leased Premises during this lease term.

5.3 Tenant Utility and Service Costs. Tenant, at Tenant's sole cost and expense, shall be responsible and shall directly contract and pay for any and all utilities and services required or desired by Tenant in connection with its use or occupancy of the Premises, which are not expressly included within the definition of Landlord Services, including, but not limited to, electricity, gas, telephone, computer, internet, communications services, plumbing and drain clean out services, and alarm.

5.4 Conservation and Use Policies. Tenant, at Tenant's sole cost and expense, shall comply with federal, state, or local governmental controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term.

5.5 Exculpation of Liability. Landlord is not obligated to furnish any security patrol or any other services to Tenant, other than the Landlord Services expressly described above, and Landlord shall not be liable for any loss or damage suffered by Tenant or others, by reason of Landlord's failure to furnish or election to discontinue providing any security patrol or other services. Landlord shall not be liable for any failure or interruption of any Landlord Service being furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease. Landlord makes no representation with respect to the presence, adequacy or fitness of the heating, air conditioning or ventilation equipment on or about the Premises to maintain temperatures which may be required for, or because of, any equipment of Tenant. The exculpation of liability under this Section 5.5 shall not apply to the extent claims are caused by Landlord's gross negligence or willful misconduct.

6. TAXES.

6.1 Taxes. As used in this Lease "**Taxes**" means Possessory Interest Taxes and Personal Taxes. Tenant's obligations for Taxes for the last full or partial year of the Term and for any prior unpaid Taxes shall survive the expiration or earlier termination of this Lease.

6.2 Possessory Interest Taxes. This Lease creates a possessory property interest in Tenant. Tenant's property interest may be subject to property taxation, and Tenant or the party in whom the possessory interest is vested shall be responsible for payment of any and all property taxes levied on the interest (collectively, "**Possessory Interest Taxes**").

6.3 Personal Taxes. Tenant shall pay directly to the taxing authority all taxes and assessments levied upon the trade fixtures, alterations, additions, improvements, partitions, cabling, wiring, furniture, equipment, inventories and other personal property located and/or installed on the Premises by or on behalf of Tenant (individually and collectively "**Tenant's Property**") and any Tenant Improvements (collectively, "**Personal Taxes**").

6.4 Payment of Taxes. Tenant shall pay all Taxes prior to delinquency. To the extent any such taxes are not separately assessed or billed to Tenant by the taxing authority, Landlord shall deliver to Tenant copies of the assessment and tax bill. Tenant shall pay such amount directly to the taxing authority no later than ten (10) business days prior to the date on which such Taxes are due. Should Tenant fail to pay its Taxes, Landlord may elect to do so on Tenant's behalf within five (5) days of Landlord's demand therefor. Tenant shall reimburse

Landlord for such Taxes and any penalties and fines, together with interest at the Applicable Interest Rate, from the date Landlord tendered payment.

7. INSURANCE.

7.1 Landlord. Landlord may elect to self-insure, jointly-insure, or maintain insurance or an insurance equivalent (including, but not limited to, that offered to a municipality through and by a joint powers authority, a self-insurance pool of liability coverage authorized pursuant to California Government Code Section 6500, or similar collective) insuring the Property (excluding Tenant's Property and any Tenant Improvements) on an occurrence basis against fire and extended coverage (including, if Landlord elects, "all risk" coverage) similar in type and coverage limits to that carried by Landlord on its other properties. At Landlord's option, such insurance or insurance equivalent may be carried under any blanket or umbrella policies or other insurance or insurance equivalent which Landlord has in force for other buildings or projects. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine. All such insurance or insurance equivalent maintained by Landlord pursuant to this Section 7.1 is referred to herein as "**Landlord's Insurance**." Landlord's Insurance shall not, under any circumstances, include Tenant's Property, any Tenant Improvements, or other items required to be covered by Tenant's Insurance.

7.2 Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times during the Term the following "**Tenant's Insurance**," and shall be liable for all premiums, deductibles, and self-insured amounts, if any, in connection therewith. Tenant's Insurance shall not have a deductible amount exceeding Five Thousand Dollars ($5,000).

7.3 Commercial General Liability Insurance. A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability (including Tenant's indemnification obligations under this Lease), premises liability, products and completed operations liability, owner's protective coverage, broad form property damage, and bodily injury (including wrongful death) and advertising injury coverage. If necessary, Tenant shall provide for restoration of the aggregate limit.

7.4 Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance, if required by Law, which complies with all applicable state statutes and regulatory requirements, and employer's liability insurance coverage in statutory amounts.

7.5 Property Insurance. "All risk" property insurance including fire and extended coverage, sprinkler leakage, vandalism and malicious mischief coverage, covering damage to or loss of Tenant's Property or any Tenant Improvements (together with, if the property of Tenant's invitees is to be kept in the Premises, warehouser's legal liability or bailee customers insurance insuring property belonging to invitees and located in or about the Premises), in an amount not less than the full replacement cost thereof. In the event that there shall be a dispute as to the amount which comprises full replacement cost, the decision of Landlord or the mortgagees of Landlord shall be presumptive.

7.6 Other Insurance. Any other form or forms of insurance as Landlord or the mortgagees of Landlord may reasonably require from time to time, in form, amounts and for insurance risks against which a prudent tenant would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

7.7 General.

7.7.1 Insurance Companies. Tenant's Insurance shall be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A-VII (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

7.7.2 Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for Tenant's Insurance, in the form of the ACORD standard certificate of insurance, prior to the Commencement Date. Tenant shall, at least thirty (30) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the parties named as additional insureds as required in this Lease. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and costs resulting from said failure.

7.7.3 Additional Insureds. Landlord and any property management company of Landlord for the Premises shall be named as additional insureds on the commercial general liability policy required by Section 7.3. An additional insured endorsement naming such parties as additional insured(s) shall be attached to the certificate of insurance.

7.7.4 Primary Coverage. Tenant's Insurance shall be primary, without right of contribution from any Landlord's Insurance.

7.7.5 Umbrella/Excess Insurance. Any umbrella liability policy or excess liability policy shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of Tenant's Insurance shall not limit Tenant's liability under this Lease.

7.7.6 Waiver of Subrogation. Tenant waives any right to recover against Landlord for claims for damages to Tenant's Property or any Tenant Improvements to the extent covered (or required by this Lease to be covered) by Tenant's Insurance. This provision is intended to waive fully, and for the benefit of Landlord, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Tenant pursuant to this Lease shall include a waiver of subrogation endorsement attached to the certificate of insurance.

7.7.7 Notification of Incidents. Tenant shall notify Landlord within twenty-four (24) hours after the occurrence of any accident or incident on or about the Property or any portion thereof which could give rise to a claim against Landlord, Landlord's Insurance, Tenant, or Tenant's Insurance, except that Tenant shall not be obligated to give Landlord notice of any accident or incident which could give rise to a claim under Tenant's workers' compensation

insurance. Tenant's notice shall be accompanied by a copy of any report(s) relating to the accident or incident.

7.7.8 Compliance With Insurance Requirements; Warranties. Tenant shall not do anything in the Premises, or bring or keep anything therein, or subject the Property or any portion thereof to any use which would damage the same or increase the risk of loss or fire, or violate Landlord's Insurance, or Tenant's Insurance, or which shall conflict with the regulations of the fire department or any Laws or with any insurance policy on the Premises or any part thereof, or with any rules or regulation established by any administrative body or official having jurisdiction. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted.

8. INDEMNITY; LIABILITY EXEMPTION.

8.1 Indemnity. Except to the extent claims are caused by Landlord's gross negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected officials, officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (ii) Tenant's or Tenant's Parties use of the Premises, the Property, or any portion thereof, or the conduct of Tenant's business or any activity, work or thing done, permitted or suffered by Tenant or Tenant's Parties in or about the Premises, the Property or any portion thereof; (iii) any act, error or omission of Tenant or Tenant's Parties in or about the Property or any portion thereof; (iv) loss of, injury or damage to, or description of property (including but not limited to merchandise or inventory), including loss of use resulting from such loss, injury, damage, or destruction; or (v) any resulting economic loss, consequential damages, or exemplary damages (collectively, the "**Indemnification**"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord. The obligations of Tenant under this Section 8.1 shall survive the expiration or other termination of this Lease with respect to any claims or liability arising prior to such expiration or other termination.

8.2 Exemption of Landlord from Liability. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property including, but not limited to, Tenant's Property and any Tenant Improvements, and injury to or death of persons in, upon or about the Premises, the Property, or any portion thereof, arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except to the extent such claims are caused by Landlord's sole or active negligence or willful misconduct. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, or injury to or death of Tenant, Tenant's Parties or any other person in or about the Premises, the Property, or any portion thereof, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions

arising within or about the Premises, the Property, or any portion thereof or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except damage or injury caused solely by Landlord's sole or active negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant or occupant, if any, of the Premises, the Property, or any portion thereof, or Landlord's failure to enforce the terms of any agreements with parties other than Tenant.

9. REPAIRS AND MAINTENANCE.

9.1 Landlord's Obligations. The Premises are being leased to Tenant in their current, existing, "AS-IS" condition. It is specifically understood and agreed that Landlord has no obligation and has made no promises to alter, remodel, improve, decorate or paint the Premises, construct or install any Tenant Improvements, or otherwise alter or improve the Premises, Property, or any portion thereof. Having occupied the Premises before entering this Lease with Landlord, Tenant is familiar with the existing condition of the Property and Premises, including any Tenant Improvements, and acknowledges that Landlord has made no representation or warranty regarding the condition thereof. Landlord, at its expense shall maintain the Building's roof (including structure portions of the roof), foundation, and exterior walls, exterior windows, common areas, building systems including HVAC, plumbing, and electrical and any items in the common areas required for compliance with applicable laws.

9.2 Tenant's Waiver. Notwithstanding anything in this Lease to the contrary, whether stated or implied in this Lease, Tenant waives and releases its rights, including its right to make repairs at Landlord's expense, under California Civil Code sections 1932(1), 1941, and 1942 or any similar Laws.

9.3 Tenant's Obligations. Tenant, at its expense, shall maintain the Premises in good order, condition and repair, including interior floor surfaces and floor coverings, interior walls and wall coverings, paintings, interior glass, doors, Tenant Improvements, Signs, and any items required for compliance with Laws. In the event Tenant fails, in the reasonable judgment of Landlord, to so maintain the Premises in good order, condition and repair, Landlord shall in its sole discretion, upon five (5) days' written notice to Tenant, have the right but not the obligation to perform such maintenance, repairs or refurbishing at Tenant's expense, provided Tenant fails to do so within such five (5) day period. If Landlord elects to undertake any such repairs or maintenance as provided above, then Tenant shall pay as additional Rent, Landlord's actual costs paid or incurred in connection therewith.

10. ALTERATIONS.

10.1 Trade Fixtures; Alterations. Subject to the conditions and requirements of this Section 10, Tenant may install necessary trade fixtures, equipment and furniture in the Premises, provided that such items are installed and are removable without structural or material damage to the Premises or any Tenant Improvements. For purposes of this Lease, "**Trade Fixtures**" means specialty fixtures or equipment used in Tenant's trade or business as identified by Tenant and agreed to by Landlord in writing. Tenant shall not construct, or allow to be constructed, any alterations, physical additions, or improvements in, about, or to the Premises without the prior

written consent of Landlord, which consent may be granted or denied in Landlord's sole discretion. If Landlord approves proposed alterations, additions or improvements, Landlord's consent may be conditioned upon Tenant's establishing compliance with Laws and with Landlord's reasonable requirements regarding selection of contractors and construction of improvements and alterations. Should Tenant make any alterations, additions, improvements without the prior written consent of Landlord, Landlord may, at any time during the Term of this Lease, require Tenant to remove any or all of the same and restore the Premises to their prior condition, at Tenant's sole cost and expense.

10.2 Satellites and Antennae. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant agree that it shall be reasonable for Landlord to withhold its consent to installation in or about the Premises or any portion thereof of equipment comprising or relating to relays, monopoles, satellite dishes, antennae, wireless telecommunications devices, transmitters, roof mounts, two-way radios, or similar apparatus (collectively, "**Transmission Devices**").

10.2.1 Tenant will not place or allow any third party to place or maintain on the roof or on any exterior door, wall or windows (or within forty-eight inches (48") of any windows) of the Premises any sign, banner, flag, awning or canopy, advertising matter or window coverings of any type without Landlord's prior written consent. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or window coverings as may be approved in good condition and repair at all times.

10.3 Signs. All signs, graphics, and awnings of every kind visible in or from public view or corridors, or the exterior of the Premises, installed or caused to be installed by, for the benefit of, or at the request of Tenant ("**Signs**") shall be, at Tenant's sole cost and expense, and subject to Landlord's prior written approval, and subject to all applicable Laws. Tenant shall remove all such Signs prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including discoloration caused by such installation or removal. Tenant shall be responsible for all fees, costs and expenses associated with installation and removal of Signs. In the event any such fees, costs or expenses are incurred by Landlord (whether directly or indirectly), Landlord shall deliver to Tenant an invoice, with reasonable supporting documentation, and Tenant shall reimburse Landlord for those amounts within fifteen (15) days after receipt of such invoice.

10.4 Standard of Work. All work to be performed by or on behalf of Tenant shall be performed diligently and in a first-class, workmanlike manner, and in compliance with all applicable Laws and all insurance carrier requirements. Landlord shall have the right, but not the obligation, to periodically inspect such work and may require changes in the method or quality thereof. In no event shall such work materially obstruct access to the Property or any portion thereof.

10.5 Damage; Removal. Tenant shall repair all damage to the Premises, Property and any portions thereof caused by the installation or removal of Tenant's Trade Fixtures or other work performed by or on behalf of Tenant. All alterations, improvements or additions that are now or in the future attached permanently to the premises shall be the property of Landlord and

remain with the premises at the termination of this lease. Upon the expiration or other termination of this Lease, Tenant shall perform any closure work, investigation and environmental remedial work required by the presence or suspected presence of any Hazardous Materials under Hazardous Materials Laws (as hereinafter defined) or by any other applicable Laws; provided, however, Landlord may require, upon written notice to Tenant no less than fifteen (15) days before the expiration or other termination of the Term, any such items (except Trade Fixtures) designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the expiration or other termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises, the Property, or any portion thereof, whatsoever and in strict accordance with all applicable Laws.

10.6 Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises and Property and all portions thereof free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) business days' prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Tenant shall cause such lien to be released and removed within ten (10) days after the date of filing, and if Tenant fails to do so, Landlord may take such action as may be necessary to remove such lien, without the duty to investigate the validity of it, and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon, at the Applicable Interest Rate, from the date of expenditure.

10.7 Bonds. Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, lien, performance, and payment completion bonds in an amount equal to one and one-half times the estimated cost of any alterations, additions, or improvements to insure Landlord, the Premises and the Property against any liability for mechanic's and materialmen's liens, and to ensure completion of the work and payment of any contractors or subcontractors.

11. PREVAILING WAGES.

11.1 Prevailing Wages. Tenant acknowledges and agrees that any Tenant Improvements, repairs, maintenance, or alterations made by or on behalf of Tenant to the Premises, Property, or any portion thereof ("**Improvement Work**"), which will become Landlord's property upon the expiration or termination of this Lease, whether paid for in whole or part by Landlord or which are considered to have been paid for in whole or part by Landlord, will constitute "[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds…." California Labor Code § 1720. Accordingly, Tenant shall comply with applicable prevailing wage policies as set forth in the City of Berkeley Municipal Code, applicable California Labor Code requirements pertaining to "public works" (California Labor Code Section 1720 et seq., as amended from time to time and implementing regulations)), and other applicable Laws addressing the payment of prevailing wages in connection with any Improvement Work (collectively, "**Prevailing Wage Laws**"). Tenant shall require the general contractor for any Improvement Work to submit, upon request by Landlord, certified copies of payroll records to Landlord and to maintain and make records available to Landlord and its designees for inspection and copying to ensure compliance with

Prevailing Wage Laws. Tenant shall also include in its general contractor agreement, and in all of its subleases and other contracts, a provision in a form acceptable to Landlord which obligates the general contractor and others as applicable, (i) to comply with, and to require that their respective subtenants, contractors and/or subcontractors comply with, Prevailing Wage Laws, and (ii) upon request by Landlord to submit certified copies of payroll records to Landlord and to maintain and make such payroll records available to Landlord and its designees for inspection and copying during regular business hours at the Premises or at another location within the City of Berkeley. Tenant shall defend, indemnify and hold harmless Landlord and its officers, officials, employees, volunteers, agents and representatives (collectively, "**Indemnitees**") from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "**Claims**"), arising out of or in any way connected with Tenant's obligation to comply with all such Prevailing Wage Laws, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726. Tenant hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with Tenant's obligation to comply with all Prevailing Wage Laws with respect to the Improvement Work.

12. PERMITTED USE AND PUBLIC TRUST TIDELANDS REQUIREMENTS.

12.1 Usage. The Premises shall be used only for the permitted uses set forth in Section 6 of the Basic Lease Information and for no other purpose whatsoever without the prior written consent of Landlord. Tenant's execution of this Lease and entry of the Premises hereunder shall conclusively establish that the foregoing were at such time in satisfactory condition. Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws, statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, 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. Tenant shall be responsible for obtaining a Berkeley Business License and any other permit or business license required by any governmental agency permitting Tenant's use of the Premises. Landlord makes no representation concerning the availability of any permits or approvals required or permitted under this Lease. Tenant shall comply with the rules and regulations, including observance of prohibited uses ("**Rules**"), attached hereto as Exhibit B and incorporated by reference, together with such reasonable additional rules and regulations as Landlord may from time to time prescribe. Tenant shall not commit waste; overload the floors or structure of the Premises; permit any unreasonable odors, smoke, dust, gas, substances, noise, or vibrations to emanate from the Premises that are offensive or objectionable to Landlord or other tenants or occupants of the Property; take any action which would constitute a nuisance or would disturb, obstruct, or endanger Landlord or other tenants or occupants of the Property; take any action which would abrogate any warranties; or use or allow the Premises to be used for any unlawful purpose; and shall cooperate with Landlord and Landlord's agents to prevent those actions. Landlord shall not be responsible for non-compliance by any other tenant or occupant with, or Landlord's failure to enforce, any of the Rules or any other terms or provisions of such tenant's or occupant's lease.

12.2 Public Trust Tidelands Requirements. Tenant acknowledges that the Property is located on State tidelands held by the City of Berkeley in trust for the promotion of commerce, navigation, and fishery pursuant to that certain statutory grant from the State of California to the City of Berkeley, as set forth in Statutes 1913, Chapter 347, as amended ("**Statutory Grant**"). Tenant agrees and covenants to use the Property in a manner consistent with the Statutory Grant and applicable public trust and tidelands requirements during the term of this Lease.

13. ENVIRONMENTAL MATTERS.

13.1 Environmental Compliance. Tenant shall, at its sole cost and expense, comply with 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 (collectively, "**Hazardous Materials Laws**") concerning the management, use, generation, storage, transportation, 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. "**Hazardous Materials**" 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. Neither Tenant nor Tenant's Parties shall use, handle, store, transport, treat, generate, release or dispose of any Hazardous Materials anywhere in, on, under or about the Premises or the Property. Tenant shall cause any and all Hazardous Materials brought onto, used, generated, handled, treated, stored, released or discharged on or under the Premises or the Property to be removed from the Premises and Property and transported for disposal in accordance with applicable Hazardous Materials Laws. Landlord shall have the right to enter the Premises from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant's compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Tenant shall immediately notify Landlord in writing of: (i) any release or discharge of any Hazardous Material; (ii) any voluntary clean-up or removal action instituted or proposed by Tenant; (iii) any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened; or (iv) any claim made or threatened by any person against Landlord, Tenant, the Premises, Property, or any portion thereof relating to Hazardous Materials or Hazardous Materials Laws. Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof and concerning Hazardous Materials or Hazardous Materials Laws. In the event Tenant institutes a cleanup or removal action, Tenant shall provide copies of all workplans and subsequent reports submitted to the governmental agency with jurisdiction to Landlord in a timely manner.

13.2 Tenant's Indemnification. Except to the extent caused by Landlord's gross negligence or willful misconduct, Tenant shall indemnify, defend and hold Landlord harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses and consultant fees and expenses)

relating to the presence of Hazardous Materials in, on, under, about, or emanating from the Premises, the Property, or any portion thereof, including, without limitation, any bodily injury, death, property damage, natural resource damage, decrease in value of the Premises, the Property, or any portion thereof, caused or alleged to have been caused by Tenant or Tenant's Parties' use, storage, handling, treatment, generation, discharge or release of Hazardous Materials in violation of Tenant's obligations under this Lease, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including, without limitation, claims made against Landlord with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by Tenant or Tenant's Parties' use, storage, handling, treatment, generation, discharge or release of Hazardous Materials.

14. DAMAGE AND DESTRUCTION.

14.1 Casualty. If, during the Term, the Premises is totally or partially destroyed from any cause rendering the Premises totally or partially inaccessible or unusable ("**Casualty**"), then Landlord shall have the right at Landlord's option to give written notice to Tenant within ninety (90) days after the date of the occurrence of such Casualty of Landlord's intention to either (i) repair such Casualty as soon as reasonably possible at Landlord's expense; or (ii) terminate this Lease as of the date of the occurrence of such damage. If Landlord elects to repair the damage, and if the cost of such repairs does not exceed the amount of insurance proceeds received by Landlord from Landlord's Insurance pursuant to Section 7 above, on account of such damage, and if the restoration can be made under then existing Laws and can be completed within one hundred eighty (180) days after obtaining all necessary permits therefor, then Landlord shall restore the Premises (excluding Tenant's Property and any Tenant Improvements) to substantially the same condition as they were in immediately before destruction. If the restoration cannot be so made, then within fifteen (15) days after Landlord determines that the restoration cannot be made as stated in this Section 14.1, Tenant may terminate this Lease immediately by giving written notice to Landlord. If the existing Laws do not permit the restoration, either party may terminate this Lease by giving ninety (90) days prior written notice to the other party. In case of destruction, there shall be an abatement or reduction of Rent, between the date of destruction and the date of completion of restoration if restoration takes place, or the date of termination if the Lease is terminated, based on the extent to which the destruction actually and materially interferes with Tenant's use of the Premises.

14.2 Tenant's Fault. If the Premises, the Property, or any portion thereof, are damaged resulting from the negligence or breach of this Lease by Tenant or any of Tenant's Parties, Rent shall not be reduced during the repair of such damage, Tenant shall have no right to terminate this Lease as provided in Section 14.1, and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

14.3 Repair Limitation. Notwithstanding anything in this Lease to the contrary, Landlord shall not be required to repair any injury or damage, by fire or other cause, to Tenant's Property or any Tenant Improvements, if any, or to rebuild, repair or replace any decorations, alterations, partitions, fixtures, trade fixtures, additions or other improvements installed on the Premises by or for Tenant, unless and to the extent Landlord has received insurance proceeds from Tenant's property insurance as provided in Section 7.5 above, and neither Tenant or Landlord has opted to terminate this Lease as provided in Section 14.1.

14.4 Waiver. The provisions of this Lease contain an express agreement between Landlord and Tenant that applies in the event of any Casualty. Tenant fully waives the provisions of any statute or regulation, including California Civil Code sections 1932(2) and 1933(4) (as amended from time to time, and successor statutes thereto) for any rights or obligations concerning a Casualty.

15. EMINENT DOMAIN.

15.1 Effect on Rights and Obligations. If any portion of the Premises is permanently taken by condemnation, this Lease shall remain in effect, except that Tenant may elect to terminate this Lease if 25% or more of the total square footage of the Premises (but expressly excluding parking areas, if any) is taken and if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving written notice to Landlord within thirty (30) days after the nature and the extent of the taking have been finally determined, as of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within the thirty- (30) day period, this Lease shall continue in full force and effect, except that the Base Rent thereafter to be paid shall be reduced on a pro-rata basis. Tenant shall notify Landlord in writing of any condemnation or threatened condemnation within ten (10) days after Tenant receives notice of said action or threatened action.

15.2 Award. In connection with any condemnation, Landlord shall be entitled to receive all compensation and anything of value awarded, paid, or received in settlement or otherwise ("**Award**") and Tenant hereby irrevocably assigns and transfers to Landlord all rights to and interests in the Award and fully waives, releases, and relinquishes any claim to, right to make a claim on, or interest in the Award, including any amount attributable to any excess of the market value of the Premises for the remainder of the Term over the present value as of the termination date of the Rent payable for the remainder of the Term (commonly referred to as the "bonus value" of the Lease).

16. DEFAULT.

16.1 Events of Default. Where "default" is used in this Lease with reference to Tenant, default refers to any breach of Tenant's obligations under this Lease, however brief. Where Tenant's default continues for the period specified below, it shall, at Landlord's option, constitute an Event of Default giving rise to the remedies set forth in Sections 16.2 and 16.3 of this Lease. The occurrence of any of the following events shall, at Landlord's option, constitute an "**Event of Default**":

16.1.1 Abandonment of or vacating the Premises, or cessation of Tenant's business operations therein, for a period of ten (10) consecutive calendar days;

16.1.2 Failure to pay Rent or other sums on the date when due and the failure continuing for a period of ten (10) days after such payment is due;

16.1.3 Failure to perform Tenant's covenants and obligations hereunder (except default in the payment of Rent) where such failure continues for a period of thirty (30) days;

16.1.4 The making of a general assignment by Tenant for the benefit of creditors; the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any Laws relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing; the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold; Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due; any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets; Tenant taking any action toward the dissolution or winding up of Tenant's affairs; the cessation or suspension of Tenant's use of the Premises; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold; or

16.1.5 The making of any material misrepresentation or omission by Tenant or any successor in interest of Tenant in any materials delivered by or on behalf of Tenant to Landlord or Landlord's lender pursuant to this Lease.

16.2 Remedies.

16.2.1 Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice (which date shall be at least three (3) business days following the date of delivery of such notice), this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord

(a) Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess the Premises or relet the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

(b) Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable Laws, including the right to recover from Tenant: (i) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (ii) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided, (iii) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and

(iv) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "worth, at the time of award," as used in (i) and (ii) above, shall be computed at the Applicable Interest Rate, and as used in (iii) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

16.3 Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at Law or in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at Law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

17. ASSIGNMENT AND SUBLETTING.

17.1 Landlord's Consent. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Lease, the Premises or any part thereof, without Landlord's prior written approval, which Landlord may withhold in its sole absolute discretion, without any obligation to consider any proposed assignment, sublet or transfer in good faith or otherwise. Tenant's attempted assignment/subletting without first obtaining Landlord's written consent shall be void at Landlord's election. Landlord's consent to one assignment or subletting shall not be deemed a consent to subsequent assignments and/or sublettings. In the event Tenant shall assign or sublet the Premises or request the consent of Landlord to any assignment or subletting or if Tenant shall request the consent of Landlord for any other act Tenant proposes to do, Tenant shall pay to Landlord any attorneys' fees incurred by Landlord in connection with each such request.

18. ESTOPPEL, ATTORNMENT AND SUBORDINATION.

18.1 Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an estoppel certificate duly executed and acknowledged to any proposed mortgagee, beneficiary, purchaser, or Landlord, in a commercially reasonable form substantially similar to that requested and a statement certifying, without limitation: (i) the date of commencement of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (iii) the date to which the rental and other sums payable under this Lease have been paid; (iv) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; (v) no deposit of any nature has been made in connection with the Lease (other than deposits the nature and amount of which are expressly described in the Lease); and (vi) such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Section 18 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises, the Property, any portion thereof, or any interest therein. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that (i) this Lease is in full force and effect, without modification except as may be represented by Landlord; (ii) there are no uncured

defaults in Landlord's performance; (iii) not more than one (1) month's rental has been paid in advance; and (iv) no deposit of any nature has been made in connection with the Lease except as represented by Landlord.

18.2 Subordination. This Lease shall be subject and subordinate to all ground leases, CC&Rs, and the lien of all mortgages and deeds of trust which now or hereafter affect the Premises or the Property or Landlord's interest therein, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination; provided, however, that Tenant's rights hereunder shall not be disturbed, except in accordance with the terms and provisions of this Lease. If requested, Tenant shall execute and deliver to Landlord within ten (10) days after Landlord's request, whatever documentation that may reasonably be required to further effect the provisions of this Section 18.2.

18.3 Attornment. In the event of a foreclosure proceeding, the exercise of the power of sale under any mortgage or deed of trust or the termination of a ground lease, Tenant shall, if requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease. The transferee shall not be liable for any acts, omissions or defaults of Landlord that occurred before the sale or conveyance, or the return of any security deposit except for deposits actually paid to transferee, and except as reduced as expressly provided for in Section 4.4 of this Lease or by operation of Law.

19. RELOCATION WAIVER.

19.1 Waiver. Tenant fully releases and discharges Landlord (in its capacity as Landlord and otherwise as a municipal corporation) from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in Law or equity, of any kind or nature, known or unknown, now existing or hereinafter arising, which arise from or relate in any manner to the relocation of Tenant's business operations, or the relocation of any person(s), business(es), or other occupant(s) located on within, on, or about, the Premises following the full or partial termination or expiration of Tenant's leasehold interest in the Premises (collectively, "**Relocation Claims**"), including waiver and release of any relocation rights under Government Code sections 7260 et seq. or any federal Laws (collectively, "**Relocation Assistance Law**"). Tenant acknowledges and agrees that the release and waiver set forth in this Section 19 is material consideration for Landlord's agreement to enter into this Lease, and that, but for this release and waiver, Landlord would not have entered into this Lease. By releasing and forever discharging the Relocation Claims, Tenant expressly waives any rights under California Civil Code section 1542, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

20. REQUIRED ACCESSIBILITY DISCLOSURE

20.1 The City hereby advises Tenant that the Property has not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Lease, The City shall have no liability or responsibility to make any repairs or modifications to the Property in

order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

20.1.1 "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject Property 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 Property, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject Property 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 Property." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Building with regard to such inspections and shall be subject to The City's prior written consent.

21. CITY NON-DISCRIMINATION ORDINANCE

21.1 Tenant hereby agrees to comply with the provisions of B.M.C. Chapter 13.26 as amended from time to time. In the performance of this Lease, Tenant agrees as follows:

21.2 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.

21.3 Tenant shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

21.4 Tenant represents that it is subject to state and federal anti-discrimination laws, and maintains a policy of non-discrimination in admission, access, and treatment in its programs, activities, and employment, which fulfill the requirements of subdivision (a), above. Assuming, arguendo, that the requirements of Chapter 13.26 would otherwise apply, for purposes of this Lease the City agrees that the documentation contemplated in subdivision (b) will not be required of Tenant.

22. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

22.1 If Tenant provides any aid, service or benefit to others on the City'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 benefit, services or activities of the City.

22.2 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 Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall solely be responsible for complying therewith.

23. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)

23.1 Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently 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 License, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

23.2 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.

23.3 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 and equity. Tenant's failure to comply with this Paragraph shall constitute default of the Lease.

23.4 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.

24. BERKELEY LIVING WAGE ORDINANCE (LWO)

24.1 Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). If Tenant employs six (6) 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 of Berkeley (City) mandated minimum compensation during the term of this Lease, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein.

24.2 Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to the LWO. If Licensee is subject to the LWO, as defined therein, Licensee shall be further required to maintain monthly records of those employees located on the Property. These records shall include the total number of hours

worked, the number of hours spent providing service on the Property, the hourly rate paid, and the amount paid by Licensee for health benefits, if any, for each of its employees providing services under the Lease. The records described in this paragraph shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Paragraph 23 herein.

24.3 If Licensee is subject to the LWO, Licensee shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all sublicenses in which Licensee enters with regard to the subject Property. Sublicenses shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the Property.

24.4 If Licensee fails to comply with the requirements of the LWO and this Lease the City shall have the rights and remedies described in this Paragraph, in addition to any rights and remedies provided by law or equity. Licensee's failure to comply with this Paragraph shall constitute default of the Lease, upon which City may terminate this Lease pursuant to Paragraph 23.

24.5 In addition, at City's sole discretion, Licensee 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 Licensee's failure to pay any of its eligible employees at least the applicable living wage 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 is not intended as a penalty of forfeiture for Licensee's breach.

25. OPPRESSIVE STATES

25.1 In accordance with Resolution No. 59,853-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this Lease to forgo contractual relations to provide personal services to, the following entities:

25.1.1 The governing regime in any Oppressive State.

25.1.2 Any business or corporation organized under the authority of the governing regime of any Oppressive State.

25.1.3 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 Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

25.2 For purposes of this Lease, the Tibet Autonomous Region and the provinces of Ado, Kham, and V-Tsang shall be deemed Oppressive States. Licensee's failure to comply with this paragraph shall constitute a default of this Lease and City may terminate this Lease. In the

event that City terminates this Lease due to a default under this provision, City may deem Licensee a non-responsible bidder for five (5) years from the date this Lease is terminated.

26. CONFLICT OF INTEREST PROHIBITED

26.1 In accordance with Government code section1090, Berkeley City Charter section 36, and the Berkeley Municipal Code (B.M.C.) Chapter 3.64, neither Licensee nor any employee, officer, director, partner or member of Licensee, or immediate family member of any of the preceding, shall have served with the City as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Lease.

26.2 In accordance with 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 the Licensee, or immediate family member of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Licensee.

26.3 Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

27. MISCELLANEOUS.

27.1 General.

27.1.1 Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Property and the Premises, and there are no agreements either oral or written other than as set forth herein.

27.1.2 Time of Essence. Time is of the essence of this Lease.

27.1.3 This subsection intentionally deleted.

27.1.4 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

27.1.5 Law. This Lease shall be construed and enforced in accordance with the Laws of the State of California, without reference to its choice of law provisions.

27.1.6 Interpretation. The titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Lease, 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 Lease shall be interpreted as though prepared jointly by both parties.

27.1.7 No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this Lease shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

27.1.8 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, subject to compliance with the terms of Section 17.

27.1.9 Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

27.1.10 Memorandum of Lease; Title. Landlord may elect to have either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. Tenant shall cooperate with Landlord in executing and acknowledging any such memorandum of lease. Upon the expiration or other termination of this Lease, Tenant shall immediately execute and deliver to Landlord a quitclaim deed to the Premises and the Property, as required, in recordable form, designating Landlord as transferee or grantee. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Property or any portion thereof.

27.1.11 No Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto or any relationship other than the relationship of landlord and tenant.

27.1.12 Merger. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

27.1.13 Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

27.1.14 Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of Landlord; and Tenant shall look solely to the rents, issues, profits and other income generated by the Premises for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the other assets of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the

transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

27.1.15 Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, to Landlord's address and Tenant's address set forth in Sections 1 and 2 of the Basic Lease Information, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

27.1.16 Brokerage Commission. Landlord and Tenant each represents that they have not been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation is due or payable. Tenant agrees to indemnify and hold harmless Landlord from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a commission, Finder's Fee or other compensation based upon any statement, representation or agreement of Tenant.

27.1.17 Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

27.1.18 Holding Over. If, with Landlord's express written consent, Tenant holds over the Premises or any part thereof after expiration or earlier termination of the Term, such holding over shall constitute a month-to-month tenancy on all the other terms and conditions of this Lease, except that Base Rent shall be equal to 125% of the Base Rent payable under this Lease for the last full month before the date of expiration or termination. This section shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Term, except as specifically set forth above. If Tenant remains in possession of the Premises after expiration or other termination of this Lease without Landlord's express written consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay as Base Rent during the holdover period an amount equal to one hundred fifty percent (150%) of the Rent payable under this Lease for the last full month before the date of expiration or termination. If Tenant fails to surrender the Premises upon expiration or other termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against all loss or liability resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the expiration or other termination of this Lease and any related attorneys' fees and brokerage commissions.

27.1.19 Surrender. Upon the expiration or other termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, broom-swept clean and in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear."

27.1.20 Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

27.1.21 Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition. This Lease shall be construed as though the covenants between Landlord and Tenant are independent and not dependent. Tenant expressly waives the benefit of any statute to the contrary, and agrees that even if Landlord fails to perform its obligations under this Lease, Tenant shall not be entitled to make repairs or perform any acts at Landlord's expense, or to any setoff against Rent or other amounts owing under this Lease against Landlord.

27.1.22 Force Majeure. For purposes of this Lease, the term "**Force Majeure**" shall mean and include the following: any delay caused by any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over any portion of the Property, over any construction anticipated to occur thereon or over any uses thereof, or by fire, flood, inclement weather, energy shortage, strikes, lockouts or other labor or industrial disturbance, civil disturbance, order of any government, court or regulatory body claiming jurisdiction or otherwise, governmental preemption or curtailment in connection with a national emergency or in connection with any rule, order, guideline or regulation of any department or governmental agency, or by reason of the conditions of supply and demand which have been or are affected by a war or other emergency, acts of terrorism, act of public enemy, war, riot, sabotage, blockade, embargo, failure or inability to secure an adequate supply of water, electricity, fuel, materials, supplies or labor through ordinary sources by reason of shortages or priority, discovery of Hazardous Materials (as defined in paragraph 13.1), earthquake, or other natural disaster, or any cause whatsoever beyond the reasonable control (excluding financial inability) of the party whose performance is required.

27.1.23 Financial Statements. Upon ten (10) days prior written request from Landlord (which Landlord may make at any time during the Term but no more often than once in any calendar year, unless Tenant is in default), Tenant shall deliver to Landlord a current financial statement of Tenant and any guarantor of this Lease. Such statements shall be prepared in accordance with generally acceptable accounting principles and certified as true in all material respects by Tenant (if Tenant is an individual) or by an authorized officer or general partner of Tenant (if Tenant is a corporation or partnership, respectively).

28. SANCTUARY CITY CONTRACTING

Tenant hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Tenant agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

A. "Data Broker" means either of the following:

i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.

B. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:
i. The City's computer-network health and performance tools;
ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, City and Tenant have executed this Lease as of the date written on number four (4) of the basic lease information sheet.

Approved as to form:

_____
City Attorney

CITY OF BERKELEY

By _____
City Manager

Registered by:

_____
City Auditor

Attest:

_____
City Clerk

Tenant
International Child Resource Institute

By_____
Ellie Mashour, Executive Director

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_____

EXHIBIT A-1

PROPERTY DESCRIPTION

The property is located within the Berkeley Waterfront in the City of Berkeley, CA. The premises include approximately 1,748 square feet comprising the southwestern portion of the 2nd floor of the building commonly known and referred to as 125-127 University Avenue, Berkeley, CA 94710.

EXHIBIT A-2

DEPICTION OF PREMISES

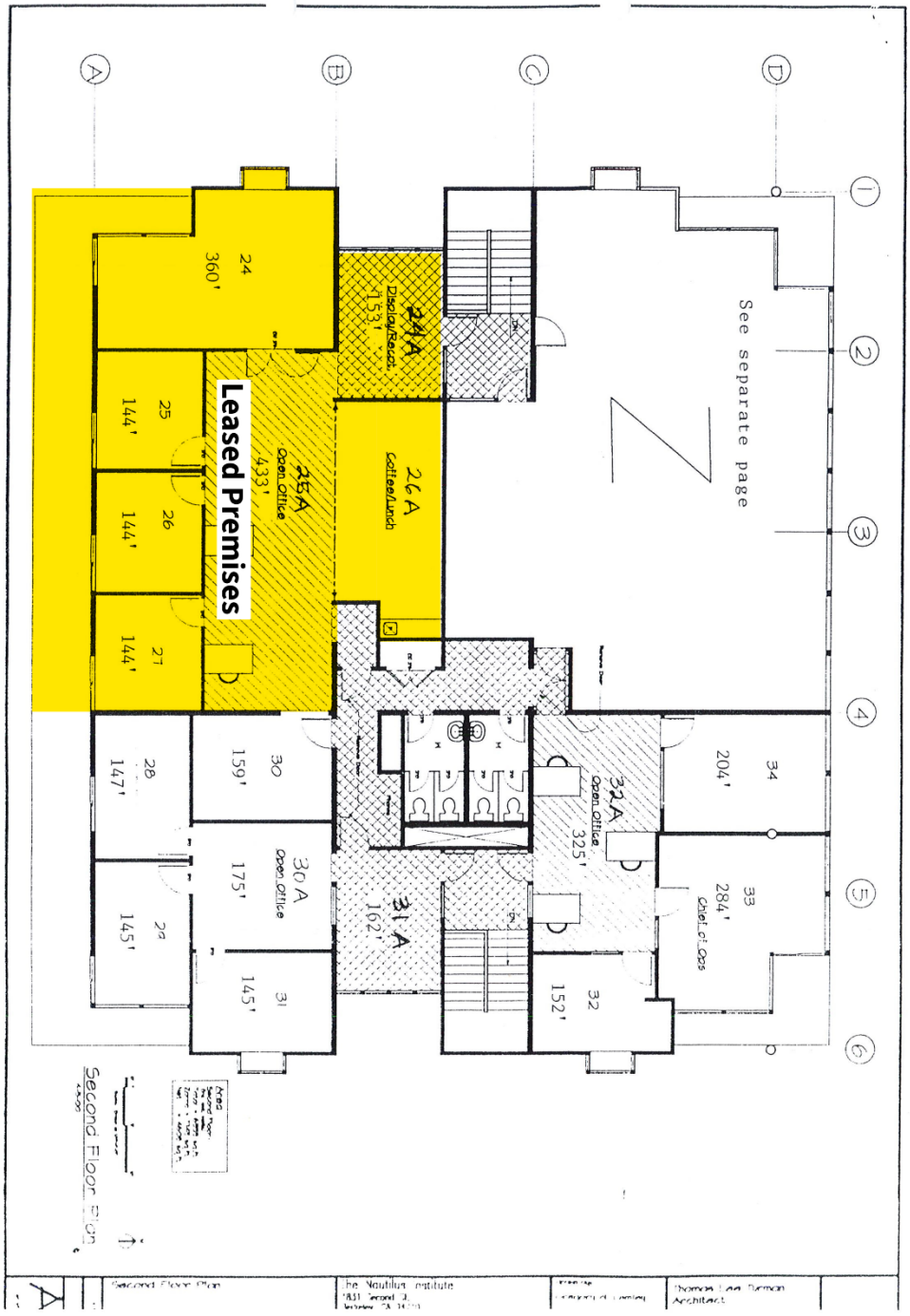

EXHIBIT B

RULES AND REGULATIONS

Tenant shall comply with the following Rules and Regulations (individually and collectively, "**Rules**"). Landlord shall not be responsible to Tenant for the nonperformance of any of these Rules.

1. Locks; Keys. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys shall be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord.

2. Doors Opening to Public Corridors; Protection of Premises. All doors opening to public corridors, if any, must be kept closed at all times except for normal ingress to and egress from the Premises. Tenant shall assume all responsibility, including keeping doors locked and other means of entry to the Premises closed, for protecting the Premises from theft, robbery, and pilferage.

3. Floor Loads. Landlord may prescribe the weight, size, and position of all safes, machinery, equipment, fixtures or other heavy property ("**Heavy Property**") brought into the Premises and the times and manner of moving those items within and out of the Premises. Tenant shall not overload any floor in the Premises or use or operate any machinery, equipment, or other device, even though its installation may have been permitted, that in Landlord's opinion is harmful to the Premises. If Tenant shall require Heavy Property, Tenant shall notify Landlord of such fact. If considered necessary by Landlord, Heavy Property must stand on supports that are adequate to distribute the weight properly and Tenant shall pay the cost of any necessary supports or structural bracing. Any damage to any property (whether or not belonging to Tenant), the Premises, the Property or any portion thereof, or its or their respective contents, or any harm to Tenant, its employees, agents, or any occupants or visitors caused by moving or maintaining any Heavy Property shall be the sole responsibility and expense of Tenant.

4. Requirements of Tenant. Any special requirements of Tenant not set forth as an obligation of Landlord under the Lease will be considered only upon written application to Landlord at Landlord's address set forth in the Lease. Landlord's employees shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.

5. Use of Plumbing Facilities; Responsibility for Damage. The plumbing facilities (including but not limited to restrooms, toilets, urinals, wash bowls, drains, and other apparatus) shall be used for no purpose other than that for which they were constructed, and no foreign substance of any kind shall be thrown into them. The expense of any breakage, stoppage, or damage resulting from violation of this rule shall be borne by Tenant.

6. Restrictions on Defacement; Maintenance of Premises. Tenant shall not mark, drive nails or screws into, or drill into the partitions, woodwork, or plaster, or in any way deface the

Premises, the Property or any portion thereof, without Landlord's prior written consent. Tenant shall maintain the Premises and all portions thereof in a safe, neat and clean condition.

7. Permitted Machines. No machines of more than one horsepower shall be installed, maintained, or operated on the Premises without Landlord's prior written consent.

8. Flammable or Combustible Fluids or Materials; Foul or Noxious Gases or Substances; Nontoxic Materials. Tenant shall not use or keep, or allow to be used or kept, in or on the Premises, the Property, or any portion thereof, any kerosene, gasoline, or other flammable or combustible fluid, material, or any foul or noxious gas or substance. All materials, fabrics, and products used in Tenant's furnishings, wall and floor coverings, and ceiling installations shall be nontoxic and subject to the prior approval of Landlord's architect or engineer. Nothing contained here is intended or shall be construed to alter or diminish any obligations of Tenant under any portion(s) of its Lease addressing environmental matters and compliance, Hazardous Materials Laws, Hazardous Materials, or similar matters, or compliance with Laws. Any existing materials supplied or installed by Landlord in the Premises are exempt from this provision.

9. Cooking; No Use of Premises for Improper Purposes. No cooking shall be done or permitted on the Premises, except that Underwriters' Laboratory (UL)-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate, and similar beverages for employees and visitors. This use must be in accordance with all Laws. The Premises shall not be used for lodging, or for any improper, objectionable, or immoral purposes.

10. Exclusion or Expulsion. Landlord reserves the right to exclude or expel from the Property or any portion thereof any person who, in Landlord's judgment, is under the influence of alcohol or drugs or commits any act in violation of any of these Rules.

11. Loitering Prohibited. Tenant and Tenant's Parties shall not loiter in or about the Property for the purpose of smoking tobacco products or for any other purpose unrelated to Tenant's use of the Premises.

12. Smoking; Illegal Substances. Smoking of tobacco products and use of illegal substances is strictly prohibited in or about the Property or any portion thereof.

13. Extermination. Tenant agrees not to permit the extermination of vermin to be performed in, on or about the Property or any portion thereof except at times and by a person or company reasonably designated by Landlord.

14. Obstructions. Tenant and Tenant's Parties shall not in any way obstruct the sidewalks, entry passages, pedestrian passageways, driveways, entrances and exits to the Property, and they shall use the same only as passageways to and from the Premises. At no time shall Tenant or Tenant's Parties be permitted to conduct work activity (except for normal loading and unloading of vehicles) nor store wooden pallets, boxes, goods or other materials outside the confines of Tenant's Premises.

15. Disposal of Trash and Garbage. Tenant shall store all trash, garbage and refuse ("**Trash**") within the interior of the Premises. Tenant shall not place or have placed in Trash

boxes or receptacles any material that may not or cannot be disposed of in the ordinary and customary manner of removing and disposing of Trash in the vicinity of the Premises. Tenant shall comply fully with all applicable Laws when disposing of Trash.

16. Provision of Information to Tenant's Employees. Tenant shall comply with requests by Landlord that Tenant inform Tenant's employees and agents of items of importance to Landlord.

17. Prohibited Uses and Activities.

17.1 Any use, operation or activity which causes or produces the attraction of flies, insects, rodents or other animals, or the creation or emission of dust or dirt, without proper mitigating measures in place;

17.2 Any use, operation or activity which causes or produces any emission into the air of any (i) noxious, toxic, hazardous or corrosive fumes or gases; (ii) excessive smoke, dirt or dust; or (iii) pollutants in violation of any local, state or federal standards;

17.3. Any use, operation or activity which causes or produces any discharge of Hazardous Materials (as defined in Lease Section 13.1) into any sewer system or storm drain serving the Property in a manner that will result in any leaching into the soil, or release into the atmosphere or groundwater;

17.4. Hazardous or unsafe uses by reasons of danger of fire or explosion, or uses that will increase the fire hazard rating on the Property or other properties, or uses objectionable or offensive to adjoining properties;

17.5. Uses in violation of any applicable Laws;

17.6. Any construction, erection, or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Property, whether such portion is improved or unimproved, except as specifically permitted by Landlord; and

17.7 Additional prohibited uses as determined by Landlord from time to time.

18. Conflict. In the event of any conflict between these Rules or any further or modified Rules from time to time issued by Landlord and the Lease provisions, the Lease shall govern and control.

19. Rule Changes; Waivers. Landlord reserves the right at any time to change or rescind any one or more of these Rules or to make such other and further reasonable Rules as, in Landlord's judgment, may from time to time be necessary for the operation, management, safety, care and cleanliness of the Property or any portion thereof, for the preservation of good order therein, or for the convenience of other occupants and tenants of the Property, if any. Landlord may waive any one or more of these Rules for the benefit of any particular tenant(s). Landlord further reserve(s) all the rights reserved to it or them by the provisions of the Lease, by any CC&Rs, or by operation of Law. No waiver by Landlord shall be construed as a waiver of those Rules in favor of any other tenant or occupant of the Premises or Property, and no waiver shall prevent Landlord from enforcing those Rules against any other tenant or occupant of the Property.

Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of the Rules by any other tenant, occupant, or other persons. Tenant shall abide by any additional rules or regulations which are ordered or requested by any governmental or military authority. Tenant shall be deemed to have read these rules and to have agreed to abide by them as a condition of Tenant's use and occupancy of the Premises.

EXHIBIT C

PAYMENT PROVISION

Tenant: International Child Rescue Institute (ICRI)

Property Address: 125-127 University Avenue, Berkeley, CA 94710

Lease Term: 5 years

Annual Rent Increase: 3%

Initial Term

Lease Year	Monthly Base Rent	Monthly Deferred Rent Repayment	Total Monthly Rent	Total Annual Rent
Sep 2026-Aug 2027	$4,370.00	$300.00	$4,670.00	$56,040.00
Sep 2027-Aug 2028	$4,501.10	$500.00	$5,001.10	$60,013.20
Sep 2028-Aug 2029	$4,636.13	$700.00	$5,336.13	$64,033.56
Sep 2029-Aug 2030	$4,775.21	$900.00	$5,675.21	$68,102.52
Sep 2030-Aug 2031	$4,918.47	$913.92	$5,832.39	$69,988.68
			Total Rent	**$318,177.96**

EXHIBIT D

GUARANTY

Not applicable to this lease agreement.

NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL
LEASE AGREEMENT: INTERNATIONAL CHILD RESOURCE INSTITUTE FOR 125-127 UNIVERSITY AVE. OFFICE SPACE

The public may participate in this hearing by remote video or in-person.

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said city council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Department of Parks, Recreation & Waterfront is proposing that the Council adopt an Ordinance executing a lease agreement with International Child Resource Institute to lease a 1,748-square foot office space in the City-owned building at 125-127 University Ave. in the Berkeley Waterfront. The rent will be $4,370 per month, escalating 3% annually, and will be deposited in the Marina Fund.

The hearing will be held on July 14, 2026, at 6:00 PM in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

For further information, please contact Scott Ferris at 510-981-6711.

A copy of the agenda material for this hearing will be available on the City's website at https://berkeleyca.gov/ as of July 2, 2026. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov 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 (510) 981-6900 or clerk@cityofberkeley.info for further information.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 12 days prior to the public hearing.

Posted: July 2, 2026

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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 July 2, 2026.

_____

Mark Numainville, City Clerk
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22

Office of the City Manager

PUBLIC HEARING
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Wahid Amiri, Interim Director, Department of Public Works

Subject: Levy and Collection of Fiscal Year 2027 Street Lighting Assessments

RECOMMENDATION

Conduct a public hearing and upon conclusion adopt two Resolutions confirming the assessments for the Berkeley Street Lighting Assessment District No. 1982-1 and the Street Lighting Assessment District 2018, approving the Engineer's Reports, and authorizing the levying and collection of assessments in Fiscal Year 2027.

FISCAL IMPACTS OF RECOMMENDATION

On June 16, 2026, Council adopted Resolutions No. 72,321 –N.S. (District No. 1982-1) and Resolution No. 72,322–N.S. (District 2018) declaring the City's intent to levy and collect FY 2027 assessments for Berkeley Street Lighting Assessment District No. 1982-1 and Street Lighting Assessment District 2018, collectively referred to herein as the Districts; preliminarily approving the Engineer's Reports for the Districts; and setting a public hearing for the July 14, 2026 Council Meeting.

The attached Resolutions confirm the assessments, approve the final Engineer's Reports, and authorize the levy and collection of assessments in Fiscal Year 2027. The assessments are to be filed with the Alameda County Auditor and included on the County's assessment roll. After collection by the County, the total amount of the assessment minus a county collection fee is paid to the City of Berkeley. The revenue is posted in the Street Light Assessment District Fund (Fund 142).

A summary of forecasted FY 2027 revenue and expenditures for the Districts is shown in Table 1.

Table 1: FY 2027 Street Light Assessment Revenue & Expenditures Forecast

Street Lighting Program Expenditures	**$**	**2,640,223**
Projected Assessments		
Street Light Assessment District 1982-1	$	1,445,789
Street Light Assessment District 2018	$	979,145
Misc. Revenue	$	59,827
Projected Net Assessments	**$**	**2,484,760**
From Street Light Assessment Fund Reserves	**$**	**(155,463)**

Allowable annual adjustments of the 2018 District assessment rates are expected to raise revenues over the coming years. The amount funded from reserves reflects past years' work and funding fluctuations. Reserves are the accumulated balance in the street lighting assessment fund (Fund 142), which can only be used for street lighting maintenance or improvements. The California Energy Commission loan for the citywide LED retrofit was fully repaid in FY 2026, eliminating approximately $370,000 in annual debt service beginning in FY 2027.

Staff anticipate the fund will have a balance of approximately $2.3 million at the end of FY 2026, which is adequate to support the projected FY 2027 deficit of approximately $155,463. Capital expenditures in FY 2027 include $200,000 for design and construction of the Streetlight Pole Replacement and Painting project, which addresses streetlight poles identified for replacement or repair. While the fund remains structurally stable, annual operating cost growth is expected to outpace assessment revenue growth in the near term, and staff will continue to monitor the fund balance and adjust capital project timing as needed.

CURRENT SITUATION AND ITS EFFECTS

The proposed FY 2027 rates for Assessment District 1982-1 (1982 District) are incorporated into the Engineer’s Report (Attachment 3) and reflect no changes to assessment rates in FY 2027. Accordingly, this action is exempt from the notice, protest, and hearing requirements of State Proposition 218 as set forth in Government Code Section 53753.5 (Article XIII D, Sec. 5). Any increase or change in formula for the assessments would make the annual assessment subject to procedures and approval process of Proposition 218 (Government Code Section 53750-53754). Table 2 details prior year and proposed FY 2027 assessment rates for this district.

Table 2: Street Lighting Assessment District No. 1982-1 Rate Schedule

Rate Category	Assessment FY 2026	Proposed Assessment FY 2027	Unit
Residential and Institutional	$ 0.0108	$ 0.0108	BSF[1]
Industrial and Utility	$ 0.0216	$ 0.0216	BSF
Commercial	$ 0.0432	$ 0.0432	BSF

The assessment for Street Lighting Assessment District 2018 (2018 District) is subject to an annual adjustment tied to the Consumer Price Index-U for the San Francisco Bay Area as of December of each succeeding year (the "CPI"), with a maximum annual adjustment not to exceed 3%. For the period beginning in December 2024 and ending in December 2025, the CPI increased by 3.04%, therefore, the assessment CPI adjustment for Fiscal Year 2027 may not exceed 3%. As approved by voters, the total annual adjustment may be calculated by taking the sum of the 1982-1 District and 2018 District assessments and multiplying the sum by the allowable CPI increase. Calculating the adjustment in this manner allows for including a 1982-1 District adjustment as part of the 2018 District adjustment. The CPI adjustment of 3% is applied to the combined total of the 1982-1 and 2018 District assessments, resulting in a total effective rate increase of approximately 7.49% for the 2018 District.[2]

These rate increases and the methodology used in their calculation for the 2018 District are in accordance with the voter approved measure; therefore, the proposed adjustments are exempt from the notice, protest, and hearing requirements of State Proposition 218 as set forth in Government Code Section 53753.5 (Article XIII D, Sec. 5). Table 3 details the proposed FY 2027 assessment rates for this district. Additional information regarding the annual adjustment and the corresponding rate increases is included in the 2018 District Engineer's Report (Attachment 4).

[1] Building Square Footage (BSF)
[2] Bureau of Labor Statistics, Data Series CUUSS49BSA0

Table 3: Street Lighting Assessment District 2018 Rate Schedule

Rate Category	Assessment FY 2026	Proposed Assessment FY 2027	Unit
Residential			
Single Family	$ 19.08	$ 20.51	parcel
Multi-Family<5 units	$ 15.26	$ 16.41	unit
Multi-Family 5 or more units	$ 11.45	$ 12.31	unit
Condominium	$ 15.26	$ 16.41	parcel
Mobile Home	$ 9.54	$ 10.26	unit
Multiple SFR on parcel	$ 19.08	$ 20.51	unit
Non-Residential			
General Commercial	$ 286.20	$ 307.65	acre
Industrial / Warehouse	$ 28.62	$ 30.77	acre
Auto Repair	$ 190.80	$ 205.10	acre
Hotel / Motel / Boarding	$ 190.80	$ 205.10	acre
Hospital	$ 119.25	$ 128.19	acre
Retirement Home	$ 23.85	$ 25.64	acre
School / Day Care	$ 42.93	$ 46.15	acre
Medical / Dental / Vet	$ 238.50	$ 256.38	acre
Church	$ 14.31	$ 15.38	acre
Mortuary	$ 4.77	$ 5.13	acre
Recreational	$ 47.70	$ 51.28	acre
Parking / Transportation	$ 95.40	$ 102.55	acre
Mini Storage	$ 14.31	$ 15.38	acre
Office	$ 71.55	$ 76.91	acre
Bank	$ 238.50	$ 256.38	acre
Park / Open Space / Agriculture	$ 0.95	$ 1.03	acre
Vacant	*Not assessed*		

Revenue from the assessments will provide needed funding for installing, maintaining, and servicing public lighting facilities, including but not limited to streetlights, traffic signals, and related electrical facilities. The improvements and services support the Strategic Plan goals of creating a resilient, safe, connected, and prepared city and providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

The Berkeley Street Lighting Assessment District No. 1982-1 was established under the Landscaping and Lighting Act of 1972 (Streets and Highway Code Section 22620-22631) on July 27, 1982 (Resolution No. 51,449-N.S.)[3]. The Street Lighting Assessment District

[3] State of California legislation (Streets & Highways §22500) allows local governmental agencies to form Landscape & Lighting Maintenance Districts. A 1972 Act Landscaping and Lighting District is a flexible

2018 was established under the same Act on June 12, 2018 (Resolution No. 68,482-N.S.). The Act requires the City Council to hold a public hearing each year to consider adoption of an annual budget and approve changes to the Engineer's Report. At this hearing owners of assessed properties within the district are allowed to make an oral or written protest against the annual levy.

During the course of, or upon conclusion of the public hearing, City Council may order changes in any of the matters provided in the respective Engineer's Report, including changes in improvements; zones within the assessment district; and the proposed district diagram, or the proposed assessment, as long as any proposed changes are less than the proposed annual levy. With the incorporation of any changes made by Council to the Engineer's Report, it is then adopted upon supporting vote by Council confirming the diagrams, assessments, and levying assessments for the coming Fiscal Year.

The City's Engineering Division has filed the FY 2027 Engineer's Reports for the assessment districts with the City Clerk. Copies of the Engineer's Reports with FY 2027 assessments will be available for review on the City's Website[4] after this Council Action, and at the reference desk of the main branch of the Berkeley Public Library and at the City Clerk's Office.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City exclusively uses LED (light emitting diode) street lighting. LED lights achieve the City's illumination standards and last longer than high-pressure sodium lamps, reducing maintenance costs, and providing environmental benefits by reducing the level of greenhouse gases emitted, reducing the level of toxic materials disposed, and maximizing energy efficiency.

RATIONALE FOR RECOMMENDATION

Failure to conduct a public hearing and adopt the Resolutions would result in non-compliance of the requirements set forth in the Landscaping and Lighting Act of 1972 thus preventing the City from levying assessments in FY 2027. The District assessments are needed to establish financial sustainability for the Program and to avoid significant reductions in service.

ALTERNATIVE ACTIONS CONSIDERED

No alternatives were considered. Failing to meet these requirements would prevent the City from collecting assessments for the Districts in FY 2027.

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tool used by local government agencies to pay for landscaping, lighting and other improvements and services in public areas. It is based on the concept of assessing only those properties that benefit from improvements financed, either directly, or indirectly through increased property values. http://www.californiataxdata.com/pdf/1972LLact.pdf

[4] https://berkeleyca.gov/city-services/report-pay/property-taxes

CONTACT PERSON
Wahid Amiri, Interim Director, Department of Public Works, (510) 981-6396
Pejman Mehrfar, Manager of Engineering, Public Works, (510) 981-6439
Terrence Salonga, Supervising Civil Engineer, Public Works, (510) 981-6447

Attachments:
1: Resolution – Levy and Collection – Street Lighting Assessment District 1982-1
2: Resolution – Levy and Collection – Street Lighting Assessment District 2018
3: Engineer's Report - Street Lighting Assessment District 1982-1 Fiscal Year 2027
4: Engineer's Report - Street Lighting Assessment District 2018 Fiscal Year 2027
5: Public Hearing Notice

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

LEVY AND COLLECTION OF FY 2027 ASSESSMENTS FOR STREET LIGHTING ASSESSMENT DISTRICT 1982-1

WHEREAS, the Council of the City of Berkeley adopted Resolution No. 72,321-N.S. declaring the City's intent to levy and collect assessments for FY 2027, approving the preliminary Engineer's Report, dated May 2026, for the Berkeley Lighting Assessment District 1982-1, and setting a public hearing for July 14, 2026; at a regular Council Meeting; and

WHEREAS, the City Clerk published notice of the public hearing 10 days prior to the public hearing in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Government Code Section 6061 in a newspaper with general circulation; and

WHEREAS, a public hearing was held on Tuesday, July 14, 2026 at the regular City Council meeting; and all interested persons were afforded the opportunity to hear and be heard or file a written protest with the Clerk; and

WHEREAS, the Council considered all public comments received against the levy of an annual assessment at the same rate as was levied in FY 2026 and the assessment follows the Landscape and Lighting Act of 1972.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley approves the final Engineer's Report dated May 2026 and authorizes the levy and collection of assessments within Berkeley Street Lighting Assessment District No. 1982-1 for FY 2027. The area of Land to be assessed is located in the City of Berkeley, Alameda County.

BE IT FURTHER RESOLVED that improvements to be made in this assessment district are generally described as maintenance or servicing of existing and future public lighting facilities, including, but not limited to streetlights, traffic signals, and related electrical facilities; and the installation and construction of public lighting including but not limited to grading, clearing, removal of debris, installation and construction of curbs, gutters, walls, sidewalk, paving, irrigation, and drainage as needed for the installation of public lighting or related electrical facilities.

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

LEVY AND COLLECTION OF FY 2027 ASSESSMENTS FOR STREET LIGHTING ASSESSMENT DISTRICT 2018

WHEREAS, the Council of the City of Berkeley adopted Resolution No. 72,322-N.S. declaring the City's intent to levy and collect assessments for FY 2027, approving the preliminary Engineer's Report, dated June 2026, for the Street Lighting Assessment District 2018, and setting a public hearing for July 14, 2026; at a regular Council Meeting; and

WHEREAS, the City Clerk published notice of the public hearing 10 days prior to the public hearing in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Government Code Section 6061 in a newspaper with general circulation; and

WHEREAS, a public hearing was held on Tuesday, July 14, 2026 at the regular City Council meeting and all interested persons were afforded the opportunity to hear and be heard or file a written protest with the Clerk; and

WHEREAS, the Council considered all public comments received against the levy of an annual assessment at the proposed assessment rate of TWENTY DOLLARS AND FIFTY-ONE CENTS ($20.51) per single-family equivalent benefit unit; and

WHEREAS, the proposed annual assessment adjustment is in accordance with formulas established when the assessment district was formed and the assessment follows the provisions of Proposition 218 (Article XIII D of the California Constitution) and the Landscape and Lighting Act of 1972.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley approves the final Engineer's Report dated June 2026 and authorizes the levy and collection of assessments within Street Lighting Assessment District 2018 for FY 2027. The area of land to be assessed is located in the City of Berkeley, Alameda County.

BE IT FURTHER RESOLVED that that improvements to be made in this assessment district are generally described as maintenance or servicing of existing and future public lighting facilities, including, but not limited to streetlights, traffic signals, and related electrical facilities; and the installation and construction of public lighting including but not limited to grading, clearing, removal of debris, installation and construction of curbs, gutters, walls, sidewalk, paving, irrigation, and drainage as needed for the installation of public lighting or related electrical facilities.

CITY OF BERKELEY

STREET LIGHTING ASSESSMENT DISTRICT No. 1982-1

ENGINEER'S REPORT

on the
Levy of an Assessment
for
Fiscal Year 2027

May 2026

Prepared by

TERRENCE SALONGA, PE
CITY OF BERKELEY
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION

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BACKGROUND

By its Resolution 51,230 N.S., adopted April 6, 1982, the Berkeley City Council initiated proceedings under the provisions of Division 15, Part 2, of the California Streets and Highways Code, entitled "Landscaping and Lighting Act of 1972". The required public hearing was held on July 20, 1982, at which time the Council ordered the improvements and the formation of the assessment district, and confirmed the diagram and assessment. The district so formed was designated the "City of Berkeley Street Lighting Assessment District 1982-1". Assessments have been levied for the 1983 through 2026 fiscal years.

This report was prepared and filed pursuant to Division 15, Part 2, of the California Streets and Highway Code Section 2250, and is exempt from Government Code Section 53753 since the proposed assessment for FY 2027 will not be increased.

PLANS AND SPECIFICATIONS

The plans and specifications for this assessment district were prepared and filed with the Engineer's Report for the 1983 fiscal year, which plans and specifications are incorporated herein by this reference thereto.

METHODOLOGY

The benefit to individual parcels within the Assessment District was established in 1982 based on the median light intensity a parcel receives. Parcel's Land Use Code (LUC) is used to categorize the parcels. The assessment is calculated by multiplying the building square footage on the parcel times the rate of its category. The rate structure has three categories: 1) Residential and Institutional, 2) Industrial, 3) Commercial. An industrial area has twice the median light intensity of a residential area and a commercial area has four times the median light intensity; therefore, the rates are two and four times higher, respectively, than the residential rate. The rates are:

Residential and Institutional	$0.0108/Building Square Footage
Industrial and Utility	$0.0216/Building Square Footage
Commercial	$0.0432/Building Square Footage

ESTIMATE OF COSTS

The improvements to be made in this assessment district are generally described as the maintenance or servicing of existing and future public lighting facilities, including, but not limited to street lights, traffic signals, and related electrical facilities; and the installation and construction of public lighting including grading, clearing, removal of debris, installation and construction of curbs, gutters, walls, sidewalks, paving, irrigation, and drainage as needed for the installation of public lighting or related electrical facilities.

An estimate of costs for the maintenance of the improvements is provided in the fiscal year (FY) 2027 Street Light Assessment Fund (Fund 142) forecast provided below.

Table 1- FY 2027 Street Light Fund Forecast

Expenses		
Personnel Expenses	$	733,653
Other Operating Expenses	$	1,342,181
Capital Expenses	$	564,389
Total Expenses	**$**	**2,640,223**
Assessments & Other Revenue		
Street Light Assessment District 1982-1	$	1,445,790
Street Light Assessment District 2018	$	979,145
Misc. Revenue	$	59,827
Total Revenue	**$**	**2,484,760**
Deficit – From Reserves	**$**	**(155,463)**

DIAGRAM

The diagram for this assessment district was prepared and filed with the Engineer's Report for the 1983 fiscal year.

ASSESSMENT

Except as described below, the assessments to be made against the assessable lots and parcels of land within this assessment district are contained in the "2025 Assessment Roll" for this district, which roll is filed herewith and incorporated herein by this reference thereto.

Said assessment roll filed herewith is based on data contained in the City's 2026 Library Tax tape and the County Assessor's 2026 maps. In the event that data contained in the 2026 Library Tax tape and 2026 maps, when issued, conflict therewith, assessments to be made against the affected parcels for this 2027 Fiscal Year shall be based upon the revised data contained in said 2027 tape and 2027 maps.

Dated: May 7, 2026

Terrence Salonga, RCE 82615
Engineer of Work

APPENDIX A: FY 2027 ASSESSMENT ROLL

An Assessment Roll (a listing of all parcels assessed within the City of Berkeley Street Lighting Assessment District 1982-1 and the amount of the assessment) has been filed with the City Engineer, and is, by reference, made part of this report and will be available for public inspection during normal office hours.

Each lot or parcel listed on the Assessment Roll is shown and illustrated on the latest County Assessor records and these records are, by reference, made part of this report. These records shall govern all details concerning the description of the lots or parcels.

FY 2027

City of Berkeley

Street Lighting Assessment District 2018

June 2026

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Introduction

Overview

The City of Berkeley ("City") provides maintenance and servicing of certain publicly-owned street lights throughout the City. In order to fund the installation, maintenance and operation (the "Services") of these improvements ("Improvements"), the City formed a city-wide street light assessment district in 1982. The rates for the 1982 assessment district have never been increased. Revenues from these assessments are placed into the streetlight fund (Fund 142).

In time, the financial outlook of the Streetlight fund began to cause concern as the costs increased for energy, labor and materials, while the revenue remained relatively static. Accordingly, the Streetlight fund no longer had enough funds to fund the Street light program. As a result, beginning in Fiscal Year 2006[1] the Streetlight fund began to receive a subsidy from the City's General Fund in order to balance revenues with expenditures. However, because of other demands on the General Fund, that subsidy ended beginning Fiscal Year 2018. The modest fund balance was sufficient for Fiscal Year 2018 to cover that year's anticipated expenses, but under those conditions it was expected to be depleted during Fiscal Year 2019. To establish financial sustainability for the Streetlight fund and avoid significant reductions in service levels, in 2018 the City conducted a funding measure to increase the assessment revenue for street light services.

With the passage of Proposition 218 in 1996, any increase in assessments must be approved by the affected property owners through a specified ballot proceeding. In addition, Proposition 218 and related subsequent court decisions create strict criteria for how assessments can be apportioned to the various properties, and the existing 1982 assessment structure may not be adequately consistent with these newer criteria. While the 1982 assessment structure may continue as a "grandfathered" assessment, any increase must be implemented in accordance with Proposition 218 and court decisions. For this reason, a new district, Street Lighting Assessment District 2018 ("District"), was formed separately, leaving the 1982 assessment structure in place, as is. The District was formed and the assessments levied pursuant to Part 2 of Division 15 of the *California Streets and Highways Code*, commonly known as the Landscape and Lighting Act of 1972 ("Act"), and Article XIIID of the California Constitution ("Article").

[1] Fiscal years are referenced in this Report by the year that fiscal period ends. For example, Fiscal Year 2006 would cover the period from July 1, 2005 through June 30, 2006.

Assessment Formation Process

This Engineer's Report ("Report") describes the Street Lighting Assessment District 2018 ("District"), along with the boundaries, a description of the facilities and public improvements to be improved, serviced and maintained by the assessments (the "Improvements"), and the proposed assessments for Fiscal Year 2027 ("Assessments").

At its meeting on April 3, 2018, the City Council passed a resolution directing that a notice of assessment and assessment ballot be mailed to property owners within the District whose property receives special benefit from the Improvements. The notice included a description of the Improvements to be funded by the Assessments, the proposed assessment amount for each parcel owned, and an explanation of the method of completing and submitting the ballot. Ballots were mailed on or about April 11, 2018.

On May 29, 2018, a public hearing was be held for the purpose of allowing public testimony regarding the proposed Assessments. At the Public Hearing, the public had the opportunity to speak on the issue, voice any concerns or protests, and obtain further information about the proposed Assessments.

The returned ballots were then tabulated, and the ballot results were announced at the City Council meeting on June 12, 2018. It was determined that the assessment ballots submitted in opposition to the proposed Assessments did not exceed the assessment ballots submitted in favor of the Assessments (each ballot was weighted by the proportional financial obligation of the property for which the ballot was submitted), so the Council was able to take action to approve the levying of Assessments for Fiscal Year 2019. The Assessments were confirmed and approved, and the Assessment information was submitted to the County Auditor/Controller. The County Auditor/Controller included the Assessments on the property tax roll beginning in Fiscal Year 2019. Assessments may now be continued by the City Council from year to year.

Legal Requirements

Proposition 218

This Assessment District was formed consistent with Proposition 218, The Right to Vote on Taxes Act, which was approved by the voters of California on November 6, 1996 and is now codified as Articles XIIIC and XIIID of the California Constitution. Proposition 218 provides for benefit assessments to be levied to fund the cost of providing services, improvements, as well as maintenance and operation expenses to a public improvement which benefits the assessed property.

Proposition 218 describes a number of important requirements, including property-owner balloting for the imposition, increase and extension of assessments, and these requirements are satisfied by the process used to establish this Assessment District.

Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority

In July 2008, the California Supreme Court decided Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority ("*SVTA*"), the most significant court case clarifying the substantive assessment requirements of Proposition 218. Several of the most important elements of the decision included further emphasis that:

- Benefit assessments are for special benefits to property, not general benefits.
- The services and/or improvements funded by assessments must be clearly defined.
- Assessment districts must be drawn to contain all parcels that receive a special benefit from a proposed public improvement.
- Assessments paid in each assessment district must be proportional to the special benefit received by each such parcel from the improvements and services funded by the assessment.

This Engineer's Report and the process used to establish the Assessments are consistent with the *SVTA* decision and with the requirements of Article XIIIC and XIIID of the California Constitution based on the following factors:

1. The District is narrowly drawn to include only the properties that receive special benefit from the specific Improvements. Thus, zones of benefit are not required, and the assessment revenue derived from real property in the District is extended only on the Improvements in the District.

2. The Improvements which will be constructed and maintained with Assessment proceeds in the District are located in close proximity to the real property subject to the Assessment. The Improvements provide illumination to streets and sidewalks enabling improved access to the residents of such assessed property. The proximity of the Improvements to the assessed parcels and the improved access and increased safety provided to the residents of the assessed parcels by the Improvements provides a special benefit to the parcel being assessed pursuant to the factors outlined by the Supreme Court in that decision.

3. Due to their proximity to the assessed parcels, the Improvements financed with Assessment revenues in the District benefit the properties in that District in a manner different in kind from the benefit that other parcels of real property in the area derive from such Improvements, and the benefits conferred on such property in the District are more extensive than a general increase in property values.

4. The assessments paid in the District are proportional to the special benefit that each parcel within the District receives from the Improvements because:

   a) The costs of the specific lighting Improvements and maintenance and utility costs in the District are specified in this Report; and

   b) Such Improvement and maintenance costs in the District are allocated among different types of property located within the District and equally among those properties which have similar characteristics, such as single-family residential parcels, multi-family residential parcels, commercial parcels, industrial parcels, etc.

Dahms v. Downtown Pomona Property

On June 8, 2009, the Court of Appeal amended its original opinion upholding a benefit assessment for property in the downtown area of the City of Pomona in Dahms v. Downtown Pomona Property ("*Dahms*"). On July 22, 2009, the California Supreme Court denied review. In *Dahms* the Court upheld an assessment that was 100% special benefit (i.e. 0% general benefit) on the rationale that the services and improvements funded by the assessments were directly provided to property in the assessment district. The Court also upheld discounts and exemptions from the assessment for certain properties.

Bonander v. Town of Tiburon

On December 31, 2009, in Bonander v. Town of Tiburon ("*Bonander*"), the Court of Appeal overturned a benefit assessment approved by property owners to pay for placing overhead utility lines underground in an area of the Town of Tiburon. The Court invalidated the assessments primarily on the grounds that the assessments had been apportioned to assessed property based in part on relative costs within sub-areas of the assessment district instead of the overall cost of the improvements and the overall proportional special benefits.

Beutz v. County of Riverside

On May 26, 2010 the Court of Appeals issued a decision in Steven Beutz v. County of Riverside ("*Beutz*"). This decision overturned an assessment for park maintenance in Wildomar, California, primarily because the general benefits associated with improvements and services was not explicitly calculated, quantified and separated from the special benefits.

Golden Hill Neighborhood Association v. City of San Diego

On September 22, 2011, the Court of Appeal issued a decision in Golden Hill Neighborhood Association v. City of San Diego appeal. This decision overturned an assessment for street and landscaping maintenance in the Greater Golden Hill neighborhood of San Diego, California. The Court described two primary reasons for its decision. First, like in *Beutz*, the Court found the general benefits associated with services were not explicitly calculated, quantified and separated from the special benefits. Second, the Court found that the City failed to record the basis for the assessment on its own parcels.

Compliance with Current Law

This Engineer's Report is consistent with the requirements of Articles XIIIC and XIIID of the California Constitution and with the *SVTA* decision because the Improvements to be funded are clearly defined; the Improvements are directly available to and will directly benefit property in the District; and the Improvements provide a direct advantage to property in the District that would not be received in absence of the Assessments.

This Engineer's Report is consistent with *Beutz*, *Dahms* and *Greater Golden Hill* because the Improvements will directly benefit property in the District and the general benefits have been explicitly calculated and quantified and excluded from the Assessments. The Engineer's Report is consistent with *Bonander* because the Assessments have been apportioned based on the overall cost of the Improvements and Services and proportional special benefit to each property.

Plans and Specifications

The work and Improvements to be undertaken by the City and the cost paid from the levy of the annual assessment provide special benefit to assessor parcels within the District defined in the Method of Assessment herein. Consistent with the Act, the Improvements are generally described as follows:

The installation, maintenance, and servicing of local street lights in close proximity to certain lots and parcels which provide a direct special benefit to such lots or parcels.

The installation, maintenance, and servicing of peripheral street light structures which provide a special benefit to all the assessable parcels within the District whether or not such parcels are in close proximity to such lighting.

The installation or construction of public lighting facilities, or the acquisition of any new improvements.

Plans and Specifications for the Improvements for the District are voluminous and are not bound in this Report but by this reference are incorporated and made a part of this Report. The Plans and Specifications are on file in the Public Works Engineering Office where they can be made available for public inspection.

Article XIII D of the California Constitution defines "maintenance and servicing expenses" as, "the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care and supervision necessary to properly operate and maintain a permanent public improvement." The Improvement funding includes, but is not limited to, the removal, repair, replacement or relocation of light standards, poles, bulbs, fixtures and appurtenances, electrical energy, supplies, engineering and incidental costs relating to the maintenance and servicing of the local lighting improvements benefiting the parcels within the District.

The Improvements to be maintained and serviced within the District are to be part of the local street light system of the City of Berkeley that confers special benefit to the District's parcels. The specific location of local street light Improvements within the City can be found in the Streetlight Condition Assessment by Tanko Lighting, which is on file in the office of the Director of Public Works, where it is available for public inspection.

The Improvements to be maintained and serviced within the District include City-owned street lights within the right of way of the local public streets located within the boundaries of the District. These lights are all within close proximity to the parcels within the District identified as receiving local lighting benefit in the Method of Assessment, and, as such, provide special benefit to these parcels.

All street light maintenance will be performed by the City of Berkeley or its contractors.

Fiscal Year 2027 Budget

A summary budget for fiscal year 2027 for the maintenance of the Improvements is provided below. The full Itemized budget for the Assessment District is voluminous and is not bound in this report but by reference is incorporated and made a part of this report. The Itemized budget is on file in the Department of Public Works where it is available for public inspection.

Table 1 – FY 2027 Budget Summary

	FY 2027
Revenue	
1982 Assessment Dist	$ 1,445,789
SLAD 2018 Assessments [1]	979,145
Misc. Revenue	59,827
TOTAL REVENUE	$ 2,484,760
Expenses	
Personnel Expenses	
Personnel	733,653
Other Operating Expenses	
Non-Personnel	1,304,814
County Collection Fee	37,367
Other Operating Subtotal	$ 1,342,181
Capital Expenses	
Capital Expenses	564,389
Capital Subtotal	$ 564,389
TOTAL EXPENSES	$ 2,640,223
To (from) General Fund and/or Reserves	$ (155,463)
Budget Allocation to Parcels	
Total Street Light 2018 Assessments [1]	$ 979,145
Total Street Light 2018 SFEs	47,741.757
Assessment per SFE [2]	**$ 20.51**

Notes on the Budget:

1. The Act requires that proceeds from the Assessments must be deposited into a special fund that has been set up for the revenues and expenditures of the District. Moreover, funds raised by the Assessment shall be used only for the purposes stated within this Report. Any balance remaining at the end of the Fiscal Year, June 30, must be carried over to the next Fiscal Year. The City may also establish a reserve fund for contingencies and special projects, as well as a capital improvement fund for accumulating funds for

larger capital improvement projects or capital renovation needs. Any remaining balance would either be placed in the reserve fund, the capital improvement fund, or would be used to reduce future years' assessments.

2. The rate shown here is for a Single-Family Equivalent ("SFE"), which is a single-family home or its equivalent. For the definition of the term SFE and rates for other types of property, see the section titled, "Method of Assessment" and the sections following it in this report.

Method of Assessment

This section of the Engineer's Report includes an explanation of the benefits derived from the installation, maintenance and servicing of the Improvements throughout the District and the Assessment methodology used to apportion the total Assessment to properties within the District.

The District consists of all assessor parcels within the boundaries as defined by the Assessment Diagram and the parcels identified by the Assessor Parcel Numbers listed with the levy roll included with this Report. The parcel list includes all assessable privately and publicly owned parcels within the boundaries. The method used for apportioning the Assessment is based on the proportional special benefits to be derived by the properties in the District over and above general benefits conferred on real property or to the public at large. The apportionment of special benefit is a two-step process: the first step is to identify the types of special benefit arising from the Improvements and the second step is to allocate the Assessments to property based on the estimated relative special benefit for each type of property.

Discussion of Benefit

In summary, the Assessments can only be levied based on the special benefit to property. This benefit is received by property over and above any general benefits. Moreover, such benefit is not based on any one property owner's use of the Improvements or a property owner's specific demographic status. With reference to the requirements for Assessments, Section 22573 of the Act states:

> *The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements.*

Proposition 218, as codified in Article XIIID of the California Constitution, has confirmed that Assessments must be based on the special benefit to property:

> *No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel.*

Special Benefit

Street lighting is an optional improvement, not required by state or federal law, that is an enhancement over and above requisite infrastructure, and thus is a special benefit. The majority of the benefits of the street lights are received by the benefited property, with a small portion of the benefits received by the general public on major streets only. This portion received by the general public is captured and quantified in the following section.

The factors that determine special benefit conferred on parcels are detailed below:

Improved Visibility and Safety

Well maintained, effective street lighting provides special benefit to proximate parcels, within range of the light, because it allows for safer and improved use of the property in the evenings, early morning, and at night. Street lighting provides special benefit because it increases neighborhood safety and, at least indirectly, reduces the likelihood of crime on the proximate parcels. Over time, the Improvements continue to confer a particular and distinct special benefit upon parcels within the District because of the nature of the Improvements. The proper maintenance of the street lights and appurtenant facilities increases visibility and local human presence and, in many situations, helps reduce property-related crimes, especially vandalism, against assessed properties in the District.

Improved Access, Navigation and Traffic Safety

Well maintained, effective street lighting enhances ingress, egress and accessibility of all forms to the assessed parcels in the evening, early morning, and at night by increasing visibility. Improved visibility also helps prevent local automobile, bicycle, and pedestrian traffic accidents related to the assessed parcels. This benefit includes a reduction in accidents during non-daylight hours.

Improved Community Character and Vitality

Well maintained, effective street lighting promotes evening and nighttime social interaction of residents and customers of businesses and industry. This creates a positive atmosphere and enhanced community image in the evening and at night for the assessed parcels.

All of the above-mentioned items also contribute to a specific enhancement to each of the parcels within the District. The proximate street lights make each parcel safer, more visible, more accessible, more useful, more valuable and more desirable; and this further strengthens the basis of these Assessments.

General Versus Special Benefit

The proceeds from the Assessments are used to fund the described Improvements and increased levels of maintenance to the other City facilities that serve and benefit the properties in the District. In absence of the Street Lighting Assessment District 2018, such Improvements would not be properly maintained. Therefore, the District's purpose is to ensure that the necessary and beneficial public facilities for property in the District are properly maintained, operated and repaired over time. The Assessments will ensure that street lighting and associated improvements within and adjacent to the District are functional, well maintained and effective. These public resources directly benefit the property in the District and will confer distinct and special benefits to the properties within the District.

The Improvements and Services are specifically designed, located and created to provide additional and improved resources for property inside the District and not the public at large although the Improvements maintained by the Services may be available to the general public. Other properties that are outside the District do not enjoy the unique proximity and other special benefit factors described previously. These Improvements and Services are of special benefit to properties located within the District because they provide a direct advantage to properties in the District that would not be provided in the absence of the Assessments. Any general benefits to surrounding properties outside of the Assessment District, if any, are collateral and conferred concomitantly.

Quantification of General Benefit

Although the analysis used to support these assessments concludes that the benefits are solely special, as described above, consideration is made for the suggestion that a portion of the benefits are general. General benefits cannot be funded by these assessments. The funding for general benefits must come from other sources.

The maintenance and servicing of these Improvements is also partially funded, directly and indirectly, from other sources, including the City of Berkeley, Alameda County, and the State of California. This funding comes in the form of grants, development fees, special programs, and general funds, as well as direct maintenance and servicing of facilities (e.g. curbs, gutters, streets, drainage systems, etc.). This funding from other sources more than compensates for general benefits, if any, received by the properties within the Assessment District.

In the 2009 *Dahms* case, the Court upheld an assessment that was 100% special benefit on the rationale that the services funded by the assessments were directly provided within the assessment district. It is also important to note that the improvements and services funded by the assessments in Pomona are similar to the improvements and services funded by the Assessments described in this Engineer's Report and the Court found these improvements and services to be 100% special benefit. Also similar to the assessments in Pomona, the Assessments described in this Engineer's Report fund Improvements and Services directly provided within the District and every benefiting property in the District enjoys proximity and access to the Improvements. Therefore, *Dahms* establishes a basis for minimal or zero general benefits from the Assessments. Nonetheless, possible general benefits have been liberally calculated below and then shown to be more than offset by resources from non-assessment sources.

Calculation of General Benefit

The Illumination Engineering Society of North America provides a widely-used standard for street lighting which has become the de-facto industry standard. This standard specifies footcandle requirements as a measurement of illumination at the roadway level, which are different for local, collector, and major streets using three levels (low/medium/high) of pedestrian activity. The three street classifications and pedestrian activity levels are described below with a discussion of their general benefit contribution from the street light system.

Local Streets – a street that is used to gain access to the property bordering it. The street lights on local streets primarily serve the adjacent property owner. Therefore, per industry standard, the street lights on local streets have no general benefit component.

Collector Streets – low to moderate capacity roads which serve to move traffic from local streets to arterial roads. Similar to local streets, collector streets are primarily used by local residents and per industry standard are also deemed to have no general benefit component. This street classification will be used as the baseline for this analysis.

Arterials – high capacity streets that serve as the principal network for through traffic flow. These routes connect areas of principal traffic generation and important regional roadways traversing the City. As such, this traffic includes a significant number of drivers from outside the District and the street light Improvements may confer some general benefit on those drivers.

On average, arterial streets require a 45% increase in lighting levels from the baseline collector streets.[2] This increase in lighting reinforces the special benefits to the abutting properties as defined above: increased visibility and safety; improved access, navigation and traffic safety; and improved community character and vitality. In addition to these benefits, the through traffic flow, which includes drivers from outside the District, receives the additional benefit of reduction in nighttime accidents due to enhanced lighting. The degree to which each of these benefits can be considered general benefit is shown in Table 2 below.

Table 2 – General Benefit for Arterial Streets

Benefit Factor	Relative Weight	General Benefit Contribution	Relative General Benefit
Improved Nighttime Visibility and Safety	25	0%	0.0%
Improved Access, Navigation and Traffic Safety	25	50%	12.5%
Improved Community Character and Vitality	25	0%	0.0%
Reduction in Nighttime Accidents	25	75%	18.8%
General Benefit on Arterial Streets from Improved Lighting			**31.3%**

The general benefit from arterial streets must be combined with the general benefit from all other streets in the District. Each category of street has its unique general benefit weight, prorated by center line miles of streets. This calculation is shown in Table 3 below.

Table 3 – Calculation of General Benefit

Street Classification	Centerline Miles		General Benefit Weight	**General Benefit**
Local	158	73.1%	0%	0.0%
Collector	37	17.1%	0%	0.0%
Arterial	21	9.7%	31.3%	3.0%
TOTAL	216	100%		**3.0%**

[2] Based on values from the Illumination Engineering Society of North America, *"American National Standard Practice for Roadway Lighting."*

As a result, the City of Berkeley will contribute at least 3.0% of the total budget from sources other than the Assessment. This contribution offsets any general benefits from the Assessment Services.

Calculation of the Current General Benefit Contribution from the City

This general benefit contribution is the sum of the following components:

The City of Berkeley owns, maintains, rehabilitates and replaces curb and gutter along the border of the Assessment District improvements. This curb and gutter serves to support, contain, retain, manage irrigation flow and growth, and provide a boundary for the Improvements. The contribution from the City of Berkeley toward general benefit from the maintenance, rehabilitation, and replacement of the curb and gutter is conservatively estimated to be 1%.

The City of Berkeley owns and maintains a storm drainage system along the border of the District's Improvements. This system serves to prevent flooding and associated damage to the Improvements and to manage urban runoff including local pollutants loading from the Improvements. The contribution from the City of Berkeley toward general benefit from the maintenance and operation of the local storm drainage system is conservatively estimated to be 1%.

The City of Berkeley owns and maintains local public streets throughout the District. These public streets provide access to the Improvements for its enjoyment as well as efficient maintenance. The contribution from the City of Berkeley toward general benefit from the maintenance of local public streets is conservatively estimated to be 1%.

The value of the construction of the existing street light Improvements can be quantified and monetized as an annuity. Since this construction was performed and paid for by funds other than these Assessments, this "annuity" can be used to offset general benefit costs and is conservatively estimated to contribute 25%.

General Benefit is More than Offset by City Contribution

Therefore, the total general benefit is liberally quantified at 3.0%, which is more than offset by the total non-assessment contribution toward general benefit of 28%.

Method of Assessment

As previously discussed, the proposed Assessments will provide comprehensive Improvements that will clearly confer special benefits to properties in the proposed District. The allocation of special benefits to property is partially based on the type of property and the size of property.

The development of an Assessment methodology requires apportioning to determine the relative special benefit for each property. To determine the special benefit received by individual parcels, the use of that parcel must be considered. Each category of property can benefit from street lights in a unique way, and those characteristics must be quantified. As noted above, the special benefit factors are as follows:

- Improved visibility and safety
- Improved access, navigation and traffic safety
- Improved community character and vitality

The basis for apportioning Assessments is traffic generated to and from a particular parcel. This is used because the amount of traffic generated by a parcel is directly proportional to, and effectively models, the relative quantity of the three special benefit factors. For instance, the more people that come and go from a site, the more the site benefits from the improved visibility and safety. The same reasoning applies to the other special benefit factors.

Residential Traffic

The typical single-family residence ("SFR") generates approximately ten vehicular trips per day. Condominium units generate approximately eight trips per day and apartment units generate approximately six trips per day per unit. The trip generation rates that are used for each land use are based on the trip generation rates published by the San Diego Association of Governments and the Encinitas Ranch Austin Foust Traffic Study. The trip generation rates are included in Appendix A of this report.

Non-Residential Traffic

Trip generation for non-residential parcels vary depending on their designated land use as well as size of parcel. The trip generation data for non-residential land uses are based on trips per acre. For instance, a commercial parcel on two acres typically will have twice the traffic of a commercial parcel on one acre. It follows that the two-acre parcel will then receive twice the benefit from the street lighting as the one-acre parcel. Various land uses were grouped into categories with similar traffic characteristics, resulting in the fee categories shown later in this report.

Darkness

Non-residential parcels typically do not operate all night long. The average period of darkness is 12 hours, but non-residential uses will only operate for approximately three hours of that time. For that reason, a non-residential darkness factor of (3 ÷ 12 =) 25% is applied to those parcels. For two non-residential categories, the darkness factor is different, as shown below:

- Offices and banks typically close earlier than other non-residential uses so they are assigned a darkness factor of 12.5%.
- Hotels, motels and boarding houses typically have activity further into the night than other non-residential uses, so they are assigned a darkness factor of 50%.

Non-residential trip generation is then adjusted for the darkness factor for each rate category.

Single-Family Equivalents

The SFR category is used as the baseline for calculating the special benefit for all other land uses and sizes. Each rate category is assigned a single-family equivalent ("SFE") rate using the following formula:

$$\frac{ADT \;\; x \;\; Darkness\ Factor}{ADT\ for\ SFR} = SFE\ Rate$$

Where:

- ADT = Average Daily Trips for each category
- ADT for SFR = ADT for single-family residential, which is used as a baseline figure for SFE rate
- SFE Rate = SFEs per unit shown (parcel, [living] unit, or acre)

The results of these calculations for each rate category are shown in Table 4 below.

Table 4 – Single-Family Equivalent Rates

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Landuse Category	ADT	Darkness Factor	Adj ADT	SFE Rate	Unit
Residential					
Single Family	10	1	10	1.000	parcel
Multi-Family < 5 units	8	1	8	0.800	unit
Multi-Family 5 or more units	6	1	6	0.600	unit
Condominium	8	1	8	0.800	parcel
Mobile Home	5	1	5	0.500	unit
Multiple SFR on parcel	10	1	10	1.000	unit
Non-Residential					
General Commercial	600	0.25	150	15.000	acre
Industrial / Warehouse	60	0.25	15	1.500	acre
Auto Repair	400	0.25	100	10.000	acre
Hotel / Motel / Boarding	200	0.5	100	10.000	acre
Hospital	250	0.25	62.5	6.250	acre
Retirement Home	50	0.25	12.5	1.250	acre
School / Day Care	90	0.25	22.5	2.250	acre
Medical / Dental / Vet	500	0.25	125	12.500	acre
Church	30	0.25	7.5	0.750	acre
Mortuary	10	0.25	2.5	0.250	acre
Recreational	100	0.25	25	2.500	acre
Parking / Transportation	200	0.25	50	5.000	acre
Mini Storage	30	0.25	7.5	0.750	acre
Office	300	0.125	37.5	3.750	acre
Bank	1000	0.125	125	12.500	acre
Park / Open Space / Agriculture	2	0.25	0.5	0.050	acre
Vacant	0			na	

Annual Assessment Increase

The Assessment is subject to an annual adjustment tied to the San Francisco-Oakland-Hayward Consumer Price Index-U as of December of each succeeding year ("CPI"), with a maximum annual adjustment not to exceed 3%. In order for the City's dedicated Streetlight fund revenue sources to satisfy cost requirements into the future, the maximum rate per SFE is calculated based upon the sum of the 1982 assessment and the Street Light Assessment District 2018 Assessment.

Table 5 – Maximum Single-Family Equivalent Rate Calculation

	FY 2026	FY 2027
2018 District Maximum for FY 25	$ 908,515.40	$ 908,515.40
1982 District Maximum for FY 25	$ 1,445,788.78	
Total for FY 25	$ 2,354,304.18	
Maximum Increase of 3.00% of Total for FY 27		$ 70,629.13
FY 26 Maximum Assessment		$ 979,144.53
Total SFEs		47,741.757
FY 27 Maximum Rate per SFE		**$ 20.51**

Duration of Assessment

The Assessments may be continued every year after their formation, so long as the public Improvements need to be maintained and improved and the City requires funding from the Assessments for these Improvements in the District. As noted previously, the Assessment can continue to be levied annually after the City Council approves an annually updated Engineer's Report, budget for the Assessment, Improvements to be provided and other specifics of the Assessment. In addition, the City Council must hold an annual public hearing to continue the Assessment.

Appeals and Interpretation

Any property owner who feels that the Assessment levied on the subject property is in error as a result of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the City of Berkeley Public Works department. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City of Berkeley City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any dispute over the decision of the City Engineer or her or his designee shall be referred to the Public Works Director and the decision of the Public Works Director shall be final.

Assessment Statement

WHEREAS, on April 21, 2026, the City Council of the City of Berkeley, County of Alameda, California, adopted a Resolution initiating proceedings for the levy of Assessments for fiscal year 2027 within the Street Light Assessment District 2018, pursuant to the provisions of the Landscaping and Lighting Act of 1972 and Article XIIID of the California Constitution (collectively "the Act");

WHEREAS, the City of Berkeley directed the undersigned Engineer of Work to prepare and file a report presenting an estimate of costs, a diagram for the Assessment District and an assessment of the estimated costs of the Improvements upon all assessable parcels within the Assessment District, to which the description of the proposed Improvements therein contained, reference is hereby made for further particulars;

NOW, THEREFORE, the undersigned, by virtue of the power vested in me under the Act and the order of the City Council of the City of Berkeley, hereby make the following assessment to cover the portion of the estimated cost of the Improvements, and the costs and expenses incidental thereto to be paid by the Assessment District.

The amount to be paid for the Improvements and the expense incidental thereto to be paid by the City of Berkeley Street Lighting Assessment District 2018 for the fiscal year 2027 are generally as listed in Table 1.

As required by the Act, an Assessment Diagram is hereto attached and made a part hereof showing the exterior boundaries of the City of Berkeley Street light Assessment District 2018. The distinctive number of each parcel or lot of land in the City of Berkeley Street light Assessment District 2018 is its Assessor Parcel Number appearing on the Assessment Roll.

And I do hereby assess and apportion the net amount of the cost and expenses of the Improvements, including the costs and expenses incident thereto, upon the parcels and lots of land within the City of Berkeley Street Lighting Assessment District 2018, in accordance with the special benefits to be received by each parcel or lot, from the Improvements, and more particularly set forth in the cost estimate and method of assessment hereto attached and by reference made a part hereof.

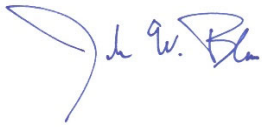
The Assessments are made upon the parcels or lots of land within the City of Berkeley Street Lighting Assessment District 2018 in proportion to the special benefits to be received by the parcels or lots of land from the Improvements.

Each parcel or lot of land is described in the Assessment Roll by reference to its parcel number as shown on the Assessor's Maps of the County of Alameda for the fiscal year 2027. For a more particular description of said property, reference is hereby made to the deeds and maps on file and of record in the office of the County Recorder of the County.

I hereby place opposite the Assessor Parcel Number for each parcel or lot within the Assessment Roll, the amount of the assessment for the fiscal year 2027 for each parcel or lot of land within the City of Berkeley Street Lighting Assessment District 2018.

Dated: May 5, 2026

Engineer of Work

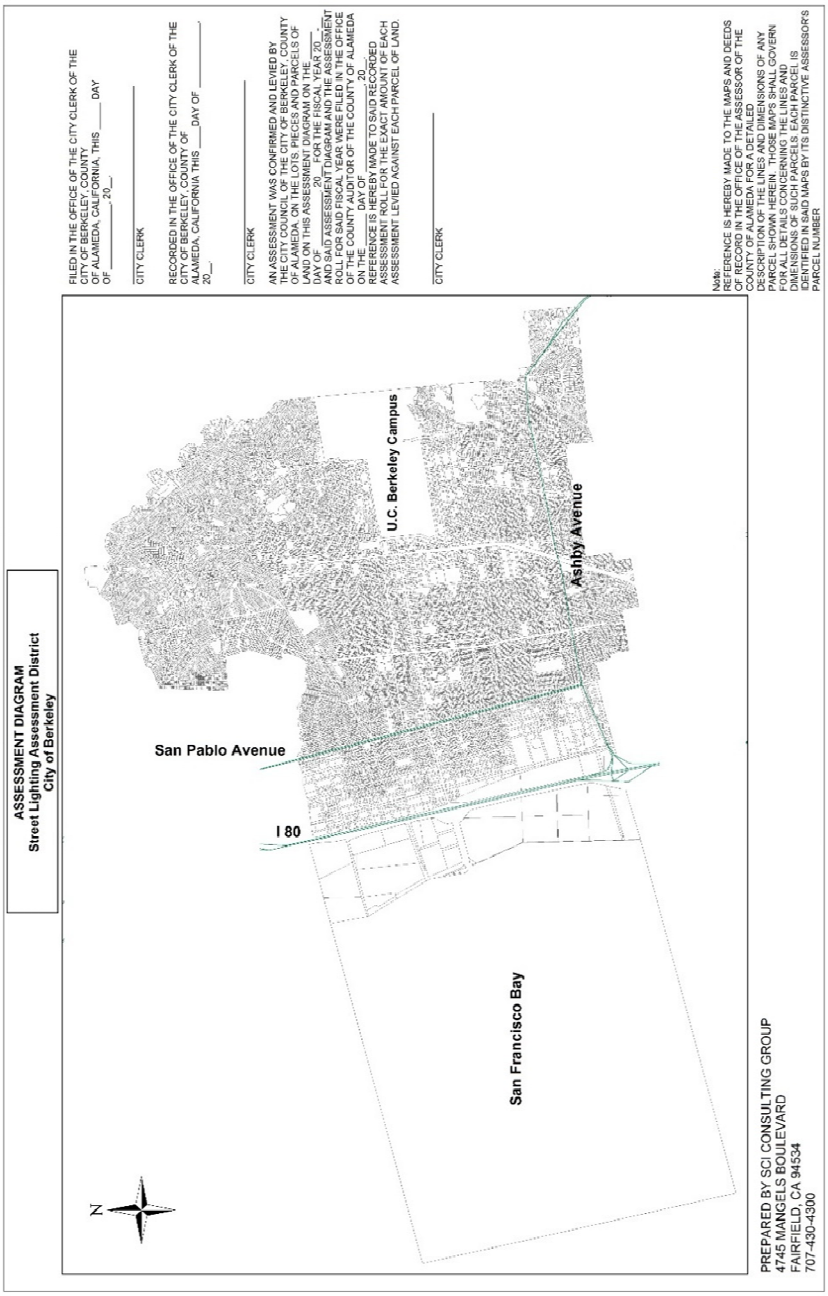


By _____
John Bliss, License No. C52091

Assessment Diagram

The boundaries of the City of Berkeley Street light Maintenance Assessment Districts and Annexations are displayed on the Assessment Diagram below.

Figure 1 – Assessment Diagram



Appendix A – SANDAG Trip Generation Tables

(NOT SO)

BRIEF GUIDE OF VEHICULAR TRAFFIC GENERATION RATES FOR THE SAN DIEGO REGION

APRIL 2002

SANDAG
401 B Street, Suite 800
San Diego, California 92101
(619) 699-1900 • Fax (619) 699-1950

NOTE: This listing only represents a ***guide*** of average, or estimated, traffic generation "driveway" rates and some very general trip data for land uses (emphasis on acreage and building square footage) in the San Diego region. These rates (both local and national) are subject to change as future documentation becomes available, or as regional sources are updated. For more specific information regarding traffic data and trip rates, please refer to the San Diego Traffic Generators manual. ***Always check with local jurisdictions for their preferred or applicable rates.***

LAND USE	TRIP CATEGORIES [PRIMARY:DIVERTED:PASS-BY][a]	ESTIMATED WEEKDAY VEHICLE TRIP GENERATION RATE (DRIVEWAY)	HIGHEST PEAK HOUR % (plus IN:OUT ratio) Between 6:00-9:30 A.M.		Between 3:00-6:30 P.M.		TRIP LENGTH (Miles)[i]
AGRICULTURE (Open Space)	[80:18:2]	2/acre**					10.8
AIRPORT	[78:20:2]						12.5
Commercial		60/acre, 100/flight, 70/1000 sq. ft.* **	5%	(6:4)	6%	(5:5)	
General Aviation		6/acre, 2/flight, 6/based aircraft* **	9%	(7:3)	15%	(5:5)	
Heliports		100/acre**					
AUTOMOBILE[b]							
Car Wash							
Automatic		900/site, 600/acre**	4%	(5:5)	9%	(5:5)	
Self-serve		100/wash stall**	4%	(5:5)	8%	(5:5)	
Gasoline	[21:51:28]						2.8
with/Food Mart		160/vehicle fueling space**	7%	(5:5)	8%	(5:5)	
with/Food Mart & Car Wash		155/vehicle fueling space**	8%	(5:5)	9%	(5:5)	
Older Service Station Design		150/vehicle fueling space, 900/station**	7%	(5:5)	9%	(5:5)	
Sales (Dealer & Repair)		50/1000 sq. ft., 300/acre, 60/service stall* **	5%	(7:3)	8%	(4:6)	
Auto Repair Center		20/1000 sq. ft., 400/acre, 20/service stall*	8%	(7:3)	11%	(4:6)	
Auto Parts Sales		60/1000 sq. ft.**	4%		10%		
Quick Lube		40/service stall**	7%	(6:4)	10%	(5:5)	
Tire Store		25/1000 sq. ft., 30/service stall**	7%	(6:4)	11%	(5:5)	
CEMETERY		5/acre*					
CHURCH (or Synagogue)	[64:25:11]	9/1000 sq. ft., 30/acre** (quadruple rates for Sunday, or days of assembly)	5%	(6:4)	8%	(5:5)	5.1
COMMERCIAL/RETAIL[b]							
Super Regional Shopping Center (More than 80 acres, more than 800,000 sq. ft., w/usually 3+ major stores)		35/1000 sq. ft.,[c] 400/acre*	4%	(7:3)	10%	(5:5)	
Regional Shopping Center (40-80acres, 400,000-800,000 sq. ft., w/usually 2+ major stores)	[54:35:11]	50/1000 sq. ft.,[c] 500/acre*	4%	(7:3)	9%	(5:5)	5.2
Community Shopping Center (15-40 acres, 125,000-400,000 sq. ft., w/usually 1 major store, detached restaurant(s), grocery and drugstore)	[47:31:22]	80/1000 sq. ft., 700/acre* **	4%	(6:4)	10%	(5:5)	3.6
Neighborhood Shopping Center (Less than 15 acres, less than 125,000 sq. ft., w/usually grocery & drugstore, cleaners, beauty & barber shop, & fast food services)		120/1000 sq. ft., 1200/acre* **	4%	(6:4)	10%	(5:5)	
Commercial Shops	[45:40:15]						
Specialty Retail/Strip Commercial		40/1000 sq. ft., 400/acre*	3%	(6:4)	9%	(5:5)	4.3
Electronics Superstore		50/1000 sq. ft**			10%	(5:5)	
Factory Outlet		40/1000 sq. ft.**	3%	(7:3)	9%	(5:5)	
Supermarket		150/1000 sq. ft., 2000/acre* **	4%	(7:3)	10%	(5:5)	
Drugstore		90/1000 sq. ft.**	4%	(6:4)	10%	(5:5)	
Convenience Market (15-16 hours)		500/1000 sq. ft.**	8%	(5:5)	8%	(5:5)	
Convenience Market (24 hours)		700/1000 sq. ft.**	9%	(5:5)	7%	(5:5)	
Convenience Market (w/gasoline pumps)		850/1000 sq. ft., 550/vehicle fueling space**	6%	(5:5)	7%	(5:5)	
Discount Club		60/1000 sq. ft., 600/acre* **	1%	(7:3)	9%	(5:5)	
Discount Store		60/1000 sq. ft., 600/acre**	3%	(6:4)	8%	(5:5)	
Furniture Store		6/1000 sq. ft., 100/acre**	4%	(7:3)	9%	(5:5)	
Lumber Store		30/1000 sq. ft., 150/acre**	7%	(6:4)	9%	(5:5)	
Home Improvement Superstore		40/1000 sq. ft.**	5%	(6:4)	8%	(5:5)	
Hardware/Paint Store		60/1000 sq. ft., 600/acre**	2%	(6:4)	9%	(5:5)	
Garden Nursery		40/1000 sq. ft., 90/acre**	3%	(6:4)	10%	(5:5)	
Mixed Use: Commercial (w/supermarket)/Residential		110/1000 sq. ft., 2000/acre* (commercial only) 5/dwelling unit, 200/acre* (residential only)	3% 9%	(6:4) (3:7)	9% 13%	(5:5) (6:4)	
EDUCATION							
University (4 years)	[91:9:0]	2.4/student, 100 acre*	10%	(8:2)	9%	(3:7)	8.9
Junior College (2 years)	[92:7:1]	1.2/student, 24/1000 sq. ft., 120/acre* **	12%	(8:2)	9%	(6:4)	9.0
High School	[75:19:6]	1.3/student, 15/1000 sq. ft., 60/acre* **	20%	(7:3)	10%	(4:6)	4.8
Middle/Junior High	[63:25:12]	1.4/student, 12/1000 sq. ft. 50/acre**	30%	(6:4)	9%	(4:6)	5.0
Elementary	[57:25:10]	1.6/student, 14/1000 sq. ft., 90/acre* **	32%	(6:4)	9%	(4:6)	3.4
Day Care	[28:58:14]	5/child, 80/1000 sq. ft.**	17%	(5:5)	18%	(5:5)	3.7
FINANCIAL[b]	[35:42:23]						3.4
Bank (Walk-In only)		150/1000 sq. ft., 1000/acre* **	4%	(7:3)	8%	(4:6)	
with Drive-Through		200/1000 sq. ft., 1500/acre*	5%	(6:4)	10%	(5:5)	
Drive-Through only		250 (125 one-way)/lane*	3%	(5:5)	13%	(5:5)	
Savings & Loan		60/1000 sq. ft., 600/acre**	2%		9%		
Drive-Through only		100 (50 one-way)/lane**	4%		15%		
HOSPITAL	[73:25:2]						8.3
General		20/bed, 25/1000 sq. ft., 250/acre*	8%	(7:3)	10%	(4:6)	
Convalescent/Nursing		3/bed**	7%	(6:4)	7%	(4:6)	
INDUSTRIAL							
Industrial/Business Park (commercial included)	[79:19:2]	16/1000 sq. ft., 200/acre* **	12%	(8:2)	12%	(2:8)	9.0
Industrial Park (no commercial)		8/1000 sq. ft., 90/acre**	11%	(9:1)	12%	(2:8)	
Industrial Plant (multiple shifts)	[92:5:3]	10/1000 sq. ft., 120/acre*	14%	(8:2)	15%	(3:7)	11.7
Manufacturing/Assembly		4/1000 sq. ft., 50/acre**	19%	(9:1)	20%	(2:8)	
Warehousing		5/1000 sq. ft., 60/acre**	13%	(7:3)	15%	(4:6)	
Storage		2/1000 sq. ft., 0.2/vault, 30/acre*	6%	(5:5)	9%	(5:5)	
Science Research & Development		8/1000 sq. ft., 80/acre*	16%	(9:1)	14%	(1:9)	
Landfill & Recycling Center		6/acre	11%	(5:5)	10%	(4:6)	

(OVER)

MEMBER AGENCIES: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista and County of San Diego.
ADVISORY/LIAISON MEMBERS: California Department of Transportation, County Water Authority, U.S. Department of Defense, S.D. Unified Port District and Tijuana/Baja California.

LAND USE	TRIP CATEGORIES [PRIMARY:DIVERTED:PASS-BY][P]	ESTIMATED WEEKDAY VEHICLE TRIP GENERATION RATE (DRIVEWAY)	HIGHEST PEAK HOUR % (plus IN:OUT ratio) Between 6:00-9:30 A.M.		Between 3:00-6:30 P.M.		TRIP LENGTH (Miles)[L]
LIBRARY	[44:44:12]	50/1000 sq. ft., 400/acre**	2%	(7:3)	10%	(5:5)	3.9
LODGING	[58:38:4]						7.6
Hotel (w/convention facilities/restaurant)		10/occupied room, 300/acre	6%	(6:4)	8%	(6:4)	
Motel		9/occupied room, 200/acre*	8%	(4:6)	9%	(6:4)	
Resort Hotel		8/occupied room, 100/acre*	5%	(6:4)	7%	(4:6)	
Business Hotel		7/occupied room**	8%	(4:6)	9%	(6:4)	
MILITARY	[82:16:2]	2.5/military & civilian personnel*	9%	(9:1)	10%	(2:8)	11.2
OFFICE							
Standard Commercial Office (less than 100,000 sq. ft.)	[77:19:4]	20/1000 sq. ft.,[O] 300/acre*	14%	(9:1)	13%	(2:8)	8.8
Large (High-Rise) Commercial Office (more than 100,000 sq. ft., 6+ stories)	[82:15:3]	17/1000 sq. ft.,[O] 600/acre*	13%	(9:1)	14%	(2:8)	10.0
Office Park (400,000+ sq. ft.)		12/1000 sq.ft., 200/acre* **	13%	(9:1)	13%	(2:8)	
Single Tenant Office		14/1000 sq. ft., 180/acre*	15%	(9:1)	15%	(2:8)	8.8
Corporate Headquarters		7/1000 sq. ft., 110/acre*	17%	(9:1)	16%	(1:9)	
Government (Civic Center)	[50:34:16]	30/1000 sq. ft.**	9%	(9:1)	12%	(3:7)	6.0
Post Office							
Central/Walk-In Only		90/1000 sq. ft.**	5%		7%		
Community (not including mail drop lane)		200/1000 sq. ft., 1300/acre*	6%	(6:4)	9%	(5:5)	
Community (w/mail drop lane)		300/1000 sq. ft., 2000/acre*	7%	(5:5)	10%	(5:5)	
Mail Drop Lane only		1500 (750 one-way)/lane*	7%	(5:5)	12%	(5:5)	
Department of Motor Vehicles		180/1000 sq. ft., 900/acre**	6%	(6:4)	10%	(4:6)	
Medical-Dental	[60:30:10]	50/1000 sq. ft., 500/acre*	6%	(8:2)	11%	(3:7)	6.4
PARKS	[66:28:6]		4%		8%		5.4
City (developed w/meeting rooms and sports facilities)		50/acre*	13%	(5:5)	9%	(5:5)	
Regional (developed)		20/acre*					
Neighborhood/County (undeveloped)		5/acre (add for specific sport uses), 6/picnic site* **					
State (average 1000 acres)		1/acre, 10/picnic site**					
Amusement (Theme)		80/acre, 130/acre (summer only)**			6%	(6:4)	
San Diego Zoo		115/acre*					
Sea World		80/acre*					
RECREATION							
Beach, Ocean or Bay	[52:39:9]	600/1000 ft. shoreline, 60/acre*					6.3
Beach, Lake (fresh water)		50/1000 ft. shoreline, 5/acre*					
Bowling Center		30/1000 sq. ft., 300/acre, 30/lane **	7%	(7:3)	11%	(4:6)	
Campground		4/campsite**	4%		8%		
Golf Course		7/acre, 40/hole, 700/course* **	7%	(8:2)	9%	(3:7)	
Driving Range only		70/acre, 14/tee box*	3%	(7:3)	9%	(5:5)	
Marinas		4/berth, 20/acre* **	3%	(3:7)	7%	(6:4)	
Multi-purpose (miniature golf, video arcade, batting cage, etc.)		90/acre	2%		6%		
Racquetball/Health Club		30/1000 sq. ft., 300/acre, 40/court*	4%	(6:4)	9%	(6:4)	
Tennis Courts		16/acre, 30/court**	5%		11%	(5:5)	
Sports Facilities							
Outdoor Stadium		50/acre, 0.2/seat*					
Indoor Arena		30/acre, 0.1/seat*					
Racetrack		40/acre, 0.6 seat*					
Theaters (multiplex w/matinee)	[66:17:17]	80/1000 sq. ft., 1.8/seat, 360/screen*	1/3%		8%	(6:4)	6.1
RESIDENTIAL	[86:11:3]						7.9
Estate, Urban or Rural (average 1-2 DU/acre)		12/dwelling unit*[R]	8%	(3:7)	10%	(7:3)	
Single Family Detached (average 3-6 DU/acre)		10/dwelling unit*[R]	8%	(3:7)	10%	(7:3)	
Condominium (or any multi-family 6-20 DU/acre)		8/dwelling unit*[R]	8%	(2:8)	10%	(7:3)	
Apartment (or any multi-family units more than 20 DU/acre)		6/dwelling unit*[R]	8%	(2:8)	9%	(7:3)	
Military Housing (off-base, multi-family)							
(less than 6 DU/acre)		8/dwelling unit	7%	(3:7)	9%	(6:4)	
(6-20 DU/acre)		6/dwelling unit	7%	(3:7)	9%	(6:4)	
Mobile Home							
Family		5/dwelling unit, 40/acre*	8%	(3:7)	11%	(6:4)	
Adults Only		3/dwelling unit, 20/acre*	9%	(3:7)	10%	(6:4)	
Retirement Community		4/dwelling unit**	5%	(4:6)	7%	(6:4)	
Congregate Care Facility		2.5/dwelling unit**	4%	(6:4)	8%	(5:5)	
RESTAURANT[S]	[51:37:12]						4.7
Quality		100/1000 sq. ft., 3/seat, 500/acre* **	1%	(6:4)	8%	(7:3)	
Sit-down, high turnover		160/1000 sq. ft., 6/seat, 1000/acre* **	8%	(5:5)	8%	(6:4)	
Fast Food (w/drive through)		650/1000 sq. ft., 20/seat, 3000/acre* **	7%	(5:5)	7%	(5:5)	
Fast Food (without drive-through)		700/1000 sq. ft.**	5%	(6:4)	7%	(5:5)	
Delicatessen (7am-4pm)		150/1000 sq. ft., 11/seat*	9%	(6:4)	3%	(3:7)	
TRANSPORTATION							
Bus Depot		25/1000 sq. ft.**					
Truck Terminal		10/1000 sq. ft., 7/bay, 80/acre**	9%	(4:6)	8%	(5:5)	
Waterport/Marine Terminal		170/berth, 12/acre**					
Transit Station (Light Rail w/parking)		300/acre, 2 1/2/parking space (4/occupied)**	14%	(7:3)	15%	(3:7)	
Park & Ride Lots		400/acre (600/paved acre), 5/parking space (8/occupied)* **	14%	(7:3)	15%	(3:7)	

* Primary source: *San Diego Traffic Generators*.

* Other sources: *ITE Trip Generation Report [6th Edition]*, Trip Generation Rates (other agencies and publications), various SANDAG & CALTRANS studies, reports and estimates.

[P] Trip category percentage ratios are daily from local household surveys, often cannot be applied to very specific land uses, and do not include non-resident drivers (draft SANDAG *Analysis of Trip Diversion*, revised November, 1990):
PRIMARY - one trip directly between origin and primary destination.
DIVERTED - linked trip (having one or more stops along the way to a primary destination) whose distance compared to direct distance ≥ 1 mile.
PASS-BY - undiverted or diverted < 1 mile.

[L] Trip lengths are average weighted for all trips to and from general land use site. (All trips system-wide average length = 6.9 miles)

[C] Fitted curve equation: Ln(T) = 0.502 Ln(x) + 6.945

[O] Fitted curve equation: Ln(T) = 0.756 Ln(x) + 3.950

T = total trips, x = 1,000 sq. ft.

[R] Fitted curve equation: t = -2.169 Ln(d) + 12.85 t = trips/DU, d = density (DU/acre), DU = dwelling unit

[S] Suggested PASS-BY [undiverted or diverted < 1 mile] percentages for trip rate reductions only during P.M. peak period (based on combination of local data/review and Other sources**):

COMMERCIAL/RETAIL	
Regional Shopping Center	20%
Community " "	30%
Neighborhood " "	40%
Specialty Retail/Strip Commercial (other)	10%
Supermarket	40%
Convenience Market	50%
Discount Club/Store	30%
FINANCIAL	
Bank	25%
AUTOMOBILE	
Gasoline Station	50%
RESTAURANT	
Quality	10%
Sit-down high turnover	20%
Fast Food	40%

[I] Trip Reductions - In order to help promote regional "smart growth" policies, and acknowledge San Diego's expanding mass transit system, consider vehicle trip rate reductions (with proper documentation and necessary adjustments for peak periods). The following are some examples:

[1] A 5% daily trip reduction for land uses with transit access or near transit stations accessible within 1/4 mile.

[2] Up to 10% daily trip reduction for mixed-use developments where residential and commercial retail are combined (demonstrate mode split of walking trips to replace vehicular trips).

Appendix B – Assessment Roll

An Assessment Roll (a listing of all parcels assessed within the City of Berkeley Street Lighting Assessment District 2018 and the amount of the assessment) has been filed with the City Engineer, and is, by reference, made part of this report and will be available for public inspection during normal office hours.

Each lot or parcel listed on the Assessment Roll is shown and illustrated on the latest County Assessor records and these records are, by reference made part of this report. These records shall govern all details concerning the description of the lots or parcels.

NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL

STREET LIGHTING ASSESSMENTS

NOTICE IS HEREBY GIVEN that at its meeting on Tuesday, July 14, 2026, the Berkeley City Council will conduct a public hearing to consider the levy of the street lighting assessments.

Berkeley Street Lighting Assessment District 1982-1:

No increase is proposed for Street Lighting Assessment District 1982-1 rates in FY 2027. The assessment rates will remain as follows:

Rate Category	Assessment Rate	Unit
Residential and Institutional	$ 0.0108	Bldg. Sf
Industrial	$ 0.0216	Bldg. Sf
Commercial	$ 0.0432	Bldg. Sf

Assessments under this district are determined by building square footage and rates.

Street Lighting Assessment District 2018:

In accordance with the voter-approved measure, Street Lighting Assessment District 2018 is subject to an annual assessment adjustment equal to the annual change in the Bay Area Consumer Price Index (CPI), up to a maximum of 3%. For the period beginning in December 2024 and ending in December 2025, the CPI increased by 3.04%; therefore, the CPI adjustment for Fiscal Year 2027 may not exceed 3.00%. As approved by voters, the total annual adjustment may be calculated by taking the sum of the 2018 District assessment and the Berkeley Street Lighting Assessment District 1982-1 assessment and multiplying the sum by the allowable CPI increase. Calculating the adjustment in this manner allows for the inclusion of a 1982-1 District adjustment as part of the 2018 District adjustment. The cumulative total adjustment results in 2018 District assessment rate increases of approximately 7.49%.

Rate Category	Assessment FY 2026	Proposed Assessment FY 2027	Unit
Residential			
Single Family	$ 19.08	$ 20.51	parcel
Multi-Family<5 units	$ 15.26	$ 16.41	unit
Multi-Family 5 or more units	$ 11.45	$ 12.31	unit
Condominium	$ 15.26	$ 16.41	parcel
Mobile Home	$ 9.54	$ 10.26	unit
Multiple SFR on parcel	$ 19.08	$ 20.51	unit
Non-Residential			
General Commercial	$ 286.20	$ 307.65	acre
Industrial / Warehouse	$ 28.62	$ 30.77	acre
Auto Repair	$ 190.80	$ 205.10	acre
Hotel / Motel / Boarding	$ 190.80	$ 205.10	acre
Hospital	$ 119.25	$ 128.19	acre
Retirement Home	$ 23.85	$ 25.64	acre
School / Day Care	$ 42.93	$ 46.15	acre
Medical / Dental / Vet	$ 238.50	$ 256.38	acre
Church	$ 14.31	$ 15.38	acre

Rate Category	Assessment FY 2026	Proposed Assessment FY 2027	Unit
Mortuary	$ 4.77	$ 5.13	acre
Recreational	$ 47.70	$ 51.28	acre
Parking / Transportation	$ 95.40	$ 102.55	acre
Mini Storage	$ 14.31	$ 15.38	acre
Office	$ 71.55	$ 76.91	acre
Bank	$ 238.50	$ 256.38	acre
Park / Open Space / Agriculture	$ 0.95	$ 1.03	acre
Vacant	*Not assessed*		

Assessments under the 2018 District are based on single-family equivalent units assigned to each land use category as well as the number of parcels, units or acres, as applicable to each category. Detailed calculation methodology of the adjustment and the corresponding rate increase are included in the Street Lighting Assessment District 2018 Engineer's Report for FY 2027. Copies of the Engineer's Report are on file at the Public Works Engineering Office.

Public Hearing Information

The hearing will be held on, July 14, 2026 at 6:00 p.m. at a regular council meeting. The Council will consider all objections or protests, if any, to the proposed assessment. At the public hearing any interested person may present written or oral testimony.

A copy of the agenda material for this hearing will be available on the City's website at berkeleyca.gov as of July 2, 2026. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

FY 2027 Assessment Rolls for both street lighting districts will be available for review at the City Clerk's Office at 2180 Milvia Street, 1st Floor.

Written comments should be mailed to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704 or emailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

For further information, please contact Terrence Salonga, Supervising Civil Engineer at (510) 981-6447.

Published: July 3, 2026 – The Berkeley Voice

City Clerk shall publish a notice at least 10 days prior to the date of the public hearing with the date, hour, and place of the public hearing for annual levy and collection of assessments in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Section 6061 of the Government Code.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted on the display case located near the walkway in front of the Council Chambers at 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 2, 2026.

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Mark Numainville, City Clerk
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23a

Rashi Kesarwani
Councilmember, District 1

ACTION CALENDAR
July 14, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units And Updating Mutual Aid Policies

RECOMMENDATION

Adopt a resolution to rescind Resolution No. 51,408-N.S. which currently restricts the use of helicopters and police canine units by the Berkeley Police Department (BPD) and to update policies authorizing BPD to deploy these resources through mutual aid agreements directly with external agencies. Under the revised policy framework, mutual aid requests for air support resources will require pre-deployment approval by the Watch Commander or their designee and will be followed by post-deployment notification to the City Manager, comprehensive incident documentation, and annual public reporting to the City Council and Police Accountability Board. The policy will continue to explicitly prohibit the use of canines for crowd control and will codify additional categorical prohibitions on canine deployments for low-level offenses.

POLICY COMMITTEE RECOMMENDATION

On Monday, March 23, 2026, the Public Safety Policy Committee took the following action: 11 speakers. M/S/C (Blackaby/O'Keefe) to send the item with a Qualified Positive recommendation to Council that includes: 1) clarifying Section 3(a) to more clearly define the purposes for which the canine team may be deployed, and 2) attaching the communication from the Police Accountability Board to the agenda item for consideration by the full City Council. Vote: All Ayes.

This staff report incorporates both elements of the Committee's qualified positive recommendation: the canine deployment purposes have been clarified, with both authorized uses and categorical prohibitions specified, and the March 17, 2026 letter from the Police Accountability Board is attached for the Council's consideration.

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CURRENT SITUATION AND ITS EFFECTS

Resolution No. 51,408-N.S., passed on July 15, 1982, establishes the current framework governing when BPD may request helicopter and canine mutual aid from outside law enforcement agencies. As written, the resolution permits canine mutual aid only to apprehend specified suspects, locate missing persons, or locate crime scenes, and explicitly prohibits canine use in crowd control. It permits helicopter mutual aid only to assist in disaster response, rescue efforts (excluding hostage rescue), and locating missing persons. In every case, the resolution requires pre-deployment approval by the City Manager, or by the Chief of Police if the City Manager is not immediately available. This item proposes both modernizing the approval process and updating the list of permitted purposes to reflect current operational best practices.

In practice, the 1982 canine apprehension authority is rarely usable in the incidents for which canine support would be most appropriate. It requires BPD to simultaneously confirm a threat to human life, that the suspect is armed, that the suspect is in a controlled and contained area, and that no one else is present– conditions that almost never align at the moment a request must be made. A residential burglary with a barricaded suspect, a high-risk warrant on a subject with a documented firearms history, and pursuit of a violent fleeing felon each fail at least one of these elements, leaving BPD unable to request canine assistance in many of the very scenarios where it would reduce risk to officers, bystanders, and suspects.

The 1982 resolution also contains no authority for canine explosives detection–a defensible omission at the time–but a meaningful gap given Berkeley's role as host to frequent large public events and demonstrations. BPD has no in-house explosives detection capability and relies on mutual aid from the Alameda County Sheriff's Office or other regional partners. Under the current resolution, those requests run through the same multi-step pre-approval chain during incidents for which delay carries direct public-safety consequences.

This item proposes that the authorized uses, and the corresponding categorical prohibitions, be clarified as follows:

Canine teams may be deployed to locate or apprehend a suspect in any of the following circumstances:

- The suspect is wanted for a violent felony; or
- There is a reasonable belief that the suspect possesses a weapon likely to cause serious bodily injury; or
- The suspect is wanted in connection with a residential burglary; or
- The deployment supports the service of a warrant on a subject who is wanted for a violent felony, has a documented history of violent offenses, has a documented history involving firearms, or has a documented history of felony evasion or physical assault against law enforcement.

Canine teams may also be deployed for purposes not involving the apprehensions of a suspect, including:

- Locating crime scenes or physical evidence;
- Locating missing persons; or
- Detecting explosives.

Canine teams shall not be deployed in any of the following circumstances:

- Infractions;
- Misdemeanor offenses not involving a weapon likely to cause serious bodily injury;
- Flight from an officer absent any additional factor that would independently justify canine deployment under this resolution;
- Thefts that escalate to a robbery solely as a result of a suspect's resistance to the victim's effort to stop the theft, absent the use of a weapon or actions causing great bodily injury;
- Stolen vehicle incidents involving a named suspect or that are civil in nature; and
- Crowd control.

Under this proposal, the Berkeley Police Department may request and deploy helicopter assistance from external law enforcement agencies with whom mutual aid agreements exist, for any of the following purposes:

- To assist in disaster response;
- To assist in rescue efforts;
- To locate missing persons;
- When the safety of law enforcement personnel is in jeopardy and aerial presence may reduce that hazard;
- To aid in the apprehension of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community;
- To locate a person who is missing and whose continued absence constitutes a serious health or safety hazard; and
- To provide aerial coordination during a vehicle pursuit, where such coordination can reduce collision risk to bystanders or improve incident resolution.

The 1982 resolution also requires the pre-approval of the City Manager in order to deploy both helicopters and canine units, which imposes a time-intensive effort during emergency situations.[1] Limiting the Department's ability to quickly deploy hinders response times and reduces operational flexibility. This limitation can compromise both the public and officer safety by preventing rapid access to resources that could significantly enhance situational awareness of the high-risk incident as well as on-scene effectiveness.

While BPD requests helicopter mutual aid approximately 4–5 times per year and canine mutual aid approximately 8–10 times per year, these requests are not routine. Each one represents a critical incident in which on-scene supervisors have determined that the resource is operationally necessary to protect life, most often an armed suspect who has fled containment, a missing child or at-risk adult whose location is rapidly becoming unrecoverable, a suspicious device requiring explosives detection, or a vehicle pursuit in which aerial coordination materially reduces collision risk to bystanders. In these incidents, the current multi-step pre-approval process, Sergeant to Watch Commander to Patrol Captain to Chief to City Manager and then back down the chain of command typically consumes 20 to 30 minutes before a request can even

[1] See attachment 2, Resolution No. 51,408-N.S. as found in the annotated agenda from the July 15, 1982 City Council meeting.

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be transmitted to a mutual aid partner. Those minutes are not administrative; they are operational. Containment perimeters fail in that window. Scent tracks cool. Suspects reach freeways and residential interiors. People at risk move further from rescue. Further, over the course of at least the last five years, and likely longer, there has never been an occasion where the City Manager has denied such a request from the Chief of Police. The infrequency of these requests is not an argument against modernizing the approval process; it is the reason modernization is justified. When BPD needs these resources at all, the need is acute, time-bound, and life-safety driven.

To address the time sensitivity and public safety concerns inherent with these types of incidents, requests for helicopters and canine mutual aid will require pre-deployment approval by the on-duty Watch Commander or their designee. Following deployment, the Watch Commander or designee will notify the Chief of Police who will provide post-deployment notification to the City Manager. This structure preserves a sworn supervisory check on every deployment while eliminating the procedural delay associated with City Manager approval mid-incident.

BACKGROUND

Resolution No. 51,408-N.S. was originally enacted on July 15,1982, in response to concerns about the use of specialized law enforcement resources from outside agencies within Berkeley. The values that motivated its adoption: local oversight, narrow tailoring of authorized uses, and explicit prohibition of canine deployment in crowd control, remain sound and are preserved in this proposal. The procedural mechanism it created, however, no longer reflects current operational practice or the broader accountability architecture now in place, which includes Lexipol aligned policy manuals, body-worn camera coverage, Police Accountability Board review of complaints, and the City's Surveillance Technology Use and Community Safety Ordinance (BMC Chapter 2.99). BPD does not own helicopters or maintain a canine unit; all such resources are obtained through mutual aid through mutual aid agreements with regional partners, including the Oakland Police Department, the Alameda County Sheriff's Office, the East Bay Regional Park District Police, and the Emeryville Police Department.

PROPOSED CHANGES AND RATIONALE FOR RECOMMENDATION

Resolution No. 51,408-N.S. is recommended for rescission so BPD can match the operational tempo of the incidents in which mutual aid air and canine support are actually requested. The number of such requests is small, but each request is made because the on-scene supervisor has already concluded that ground resources alone cannot safely resolve the incident in the time available. Updating the city policy framework to permit Watch Commander pre-approval, rather than City Manager pre-approval, aligns Berkeley with regional mutual aid best practices, with current professional standards for law enforcement, and with the City's own updated mutual aid agreements with other law enforcement agencies adopted on July 22, 2025.[2]

[2] July 22, 2025 Public Hearing: Memorandum of Understanding (MOU) Compendium: Agreements with Other Law Enforcement Agencies and Private Organizations; https://berkeleyca.gov/sites/default/files/documents/2025-07-

Replacing pre-deployment City Manager approval with a post-deployment notification preserves the City Manager's visibility into every deployment while removing a procedural delay that does not change the outcome of the approval decision; it only shortens the window in which the resource can still be operationally useful to victims, bystanders, officers, and the community. Expanding the listed purposes for air support to align with current professional standards ensures that when mutual aid is activated, its permitted uses reflect modern operational practice rather than the 1980s era restrictions. Updating the policy modernizes Berkeley's law enforcement capabilities while preserving accountability through pre-deployment supervisory approval, post-deployment notification, comprehensive documentation, and annual public reporting.

FISCAL IMPACTS

No significant new expenditures are expected from this rescission. Any costs incurred for mutual aid support will be managed through established reimbursement agreements. The policy revision is anticipated to deliver operational benefits without imposing undue financial burden on the City.

CONTACT PERSON

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

ATTACHMENTS

1) Resolution
2) Resolution No. 51,408-N.S.
3) March 17, 2026 letter from Chair Cayetano, Police Accountability Board

22%20Item%2016%20Memorandum%20of%20Understanding%20%28MOU%29%20Compendium.pdf

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RESOLUTION NO. ##,###-N.S.
RESOLUTION MODERNIZING BERKELEY POLICE DEPARTMENT POLICIES GOVERNING THE USE OF MUTUAL AID HELICOPTER AND CANINE SUPPORT RESOURCES

WHEREAS, Resolution No. 51,408-N.S., adopted on July 15, 1982, imposes outdated procedural restrictions that delay the Berkeley Police Department's ability to request mutual aid air support and canine resources from outside law enforcement agencies during critical law enforcement operations; and

WHEREAS, these restrictions hinder the Berkeley Police Department's ability to secure essential resources in high-risk incidents, thereby reducing operational flexibility and potentially compromising public and officer safety; and

WHEREAS, mutual aid agreements with external agencies providing access to helicopter support as well as police canine units are now standard practice nationwide, enhancing situational awareness, effective suspect apprehension, and search-and-rescue capabilities; and

WHEREAS, requests for mutual aid air support and canine resources are infrequent, averaging approximately 4 to 5 helicopter requests and 8 to 10 canine requests per year, each such request arises from an active life-safety incident in which procedural delay measurably increases risk to victims, bystanders, officers on scene, and the surrounding community; and

WHEREAS, replacing the existing requirement for pre-deployment City Manager approval with a structure of pre-deployment Watch Commander approval and post-deployment notification to the City Manager will facilitate rapid response during emergencies while ensuring accountability through sworn supervisory review, comprehensive documentation, and annual public reporting to the City Council and the Police Accountability Board;

NOW, THEREFORE, BE IT RESOLVED BY THE BERKELEY CITY COUNCIL THAT:

1. Resolution No. 51,408-N.S. is rescinded in full. All prior limits on the use of outside helicopter support and police canine units are nullified.

2. The Berkeley Police Department may request and deploy canine teams from external law enforcement agencies only as follows:
    a. Authorized deployments involving suspect apprehension. Canine teams may be deployed to locate or apprehend a suspect when any of the following is true:
        i. The suspect is wanted for a violent felony; or
        ii. There is a reasonable belief that the suspect possesses a weapon likely to cause serious bodily injury; or
        iii. The suspect is wanted in connection with a residential burglary; or

iv. The deployment supports service of a warrant on a subject who is wanted for a violent felony, has a documented history of violent offenses, has a documented history involving firearms, or has a documented history of felony evasion or physical assault against law enforcement.

b. Authorized deployments not involving suspect apprehension. Canine teams may be deployed to locate crime scenes or physical evidence, to locate missing persons, or to detect explosives.
c. Categorical prohibitions. Canine teams shall not be deployed in connection with: infractions; misdemeanor offenses not involving a weapon likely to cause serious bodily injury; flight from an officer absent an independent justification under this section; thefts that escalate to robbery solely from a suspect's resistance to the victim's effort to stop the theft, absent use of a weapon or actions causing great bodily injury; stolen vehicle incidents involving a named suspect or that are civil in nature; or crowd control.

3. The Berkeley Police Department may request and deploy helicopter assistance from external law enforcement agencies with whom mutual aid agreements exist, for any of the following purposes:
    a. To assist in disaster response;
    b. To assist in rescue efforts;
    c. To locate missing persons;
    d. When the safety of law enforcement personnel is in jeopardy and aerial presence may reduce that hazard;
    e. To aid in the apprehension of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community;
    f. To locate a person who is missing and whose continued absence constitutes a serious health or safety hazard; and
    g. To provide aerial coordination during a vehicle pursuit, where such coordination can reduce collision risk to bystanders and improve incident resolution.

4. The Berkeley Police Department may enter into and use mutual aid partnerships with outside agencies for all helicopter support and canine deployments described in this resolution.

5. The former requirement for pre-deployment City Manager approval is replaced with the following framework:
    a. Pre-deployment supervisory approval. Each deployment of mutual aid helicopter support or canine resources under this resolution shall require the pre-deployment approval of the on-duty Watch Commander or their designee.
    b. Post-deployment notification. Within 72 hours of any deployment, the Chief of Police or a designee shall notify the City Manager in writing. The notification shall include the date, time, and location of the deployment; the requesting BPD supervisor and the assisting agency; the operational purpose; and a brief summary of the outcome.

c. Incident documentation. All deployments shall be documented in the originating incident report consistent with existing Berkeley Police Department records practices.
d. Annual public reporting. Annually, the Chief of Police shall transmit to the City Council and the Police Accountability Board a public report summarizing all deployments of mutual aid helicopter support and canine resources during the preceding calendar year, including aggregate counts by category of use, assisting agencies utilized, and any incidents resulting in injury or formal complaint.

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RESOLUTION NO. 51,408 -N.S.

ESTABLISHING POLICIES FOR USE OF DOGS AND HELICOPTERS BY THE POLICE DEPARTMENT OF THE CITY OF BERKELEY, AND RESCINDING THE PROVISIONS OF RESOLUTION NO. 48,630-N.S. AS THEY APPLY TO THE USE OF DOGS AND HELICOPTERS.

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

That the following policies for use of dogs and helicopters by the Police Department of the City of Berkeley are hereby established:

1. Police use of dogs from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

a. To apprehend suspects

(1) Where there is a threat to human life, and

(2) Where the suspect is reasonably believed to be armed with a deadly weapon, and

(3) Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect; or

b. To locate missing persons; or

C. To locate crime scenes.

Provided, however, that the use of dogs is explicitly prohibited for use in crowd control.

2. Police use of helicopters from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

a. To assist in case of a disaster; or

b. To assist in rescue efforts (specifically excluding the rescue of hostages); or

c. To assist in locating missing persons.

FURTHER, RESOLVED, that the provisions of Resolution No. 48,630-N.S. as they apply to the use of dogs and helicopters are hereby rescinded.

Approved as to form:

City Attorney

Joshua Cayetano | Chair
Police Accountability Board
JCayetano@berkeleyca.gov

March 17, 2026

VIA ELECTRONIC MAIL [Email]
Hon. Members of the Public Safety Policy Committee
PolicyCommittee@berkeleyca.gov
2180 Milvia Street
Berkeley, California 94704

Re: PAB Response to the Proposed Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units and Updating Mutual Aid Policies

Honorable Chair Blackaby and Members of the Public Safety Policy Committee:

On behalf of the Police Accountability Board (PAB), I would like to first express our appreciation to the Public Safety Policy Committee (PSPC) for granting the PAB additional time to review this item. The PAB met on March 11, 2026, to discuss the proposal, directing its review to two key questions:

1. Whether the PAB supports, opposes, or declines to comment on replacing the requirement for City Manager (or Chief of Police) approval of helicopter or canine (K9) use with an after-action notification to the City Manager.
2. Whether the PAB supports, opposes, or declines to comment on the proposed expansion and revision of the list of permissible uses for helicopters.

City Manager Approval vs. After-Action Notification for Helicopter and K9 Use

After reviewing the proposal to remove City Manager (or, in the City Manager's absence, Chief of Police) approval for both helicopters and K9 deployments, the PAB does not support this change. The PAB's position is based on the following considerations:

- **Lack of Demonstrated Need:** The PAB believes that no evidence has been presented showing that the current process imposes an undue burden on the Berkeley Police Department (BPD) that would warrant such a change in approval procedures. The PAB understands that requests for helicopter support occur approximately 4–5 times per year,

while canine units are requested about 8–10 times annually, most often for search operations, which does not indicate a frequency that would necessitate modifying the existing approval framework.

- **Preservation of Oversight:** The existing approval requirement provides an important oversight safeguard prior to the deployment of specialized policing resources. Replacing that requirement with an after-action notification reduces that oversight.
- **General Concern About Reduced Oversight:** The PAB notes a pattern of expanding police tools and/or authorities without sufficient justification or oversight.

Expansion of Permissible Uses for Helicopters

The PAB does not support the proposed expansion and revision of the list of permissible uses for helicopters. The PAB's position is based on the following considerations:

- **Lack of Demonstrated Need**: The proposal did not include supporting data, operational analysis, or documented incidents demonstrating a need to broaden the circumstances under which helicopters may be deployed.
- **Relationship with Proposed Drone Technology**: The City is currently considering a proposal regarding the use of police drone technology. While the PAB acknowledges that drones would not be capable of performing all functions that a helicopter can provide, some of the expanded uses contemplated for helicopters appear to overlap with operations described in the drone proposal.
- **Need for Clear Policy Rationale**: Any expansion of permissible helicopter use should be supported by a clearly articulated operational rationale and relevant data regarding current deployment practices to ensure that these resources are used only when necessary and in a manner consistent with the City's objectives.

Conclusion

For the reasons outlined above, the PAB respectfully opposes the proposed rescission of City Manager approval for helicopter and K9 deployments, as well as the proposed expansion of permissible helicopter uses. The Board emphasizes the importance of maintaining appropriate oversight and requiring a clearly demonstrated operational need for changes to these longstanding policies. The PAB appreciates the opportunity to provide its input and looks forward to continuing to work with all stakeholders to ensure that policies governing specialized police resources remain effective, accountable, and transparent.

Respectfully submitted,

Joshua Cayetano

Joshua Cayetano, Chair
Police Accountability Board

Cc: Paul Buddenhagen, City Manager
David White, Deputy City Manager
Jennifer Louis, Chief of Police
Jen Tate, Deputy Chief of Police
Jose Murillo, Acting Director of Police Accountability

23b

Peace and Justice Commission

ACTION CALENDAR
July 14, 2026
(Continued from April 21, 2026)

To: Honorable Mayor Ishii and Members of the Berkeley City Council

From: Peace and Justice Commission

Submitted by: Pastor Dwayne Phillips, Chairperson, Peace and Justice Commission

Subject: Social Justice Implications of Proposed Use of Controlled Weapons and Other Policing Tools

RECOMMENDATION

Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools:

1. Retain the existing 2020 bans on chemical weapons (CS and OC), and the 1982 bans on police dogs and helicopters.
2. Retain the 1997 requirement for public reporting of each use of pepper spray.
3. Request the City Manager to engage an academic institution such as UC Berkeley, UCSF, or Stanford to study the health impacts of tear gas and other chemical weapons and canine support, potential short-term and long-term impacts on vulnerable populations and possible alternatives to the use of chemical weapons that provide officer safety, suspect safety, and safety to the general public.

SUMMARY

The Peace and Justice Commission recommends applying a social justice lens to policing decisions that could have a significant impact on the lives of Berkeley's residents and visitors, including disparate impact on marginalized, low-income, disabled, elder, and community members of color.

It is the Commission's perspective that human rights must be prioritized above administrative convenience. The Commission further finds that in an era of great polarization, it is essential to build bridges among disparate constituencies, listen to people with diverse points of view, and create solutions that serve all the people in Berkeley. For that reason, we propose that the City Manager request academic support for an independent study of health effects of the proposed weapons and tools.

FISCAL IMPACTS OF RECOMMENDATION
No significant fiscal impact on the City.

CURRENT SITUATION AND ITS EFFECTS
As of the date of this writing, Council members have introduced several resolutions for consideration bearing on BPD chemical weapons and other tools. Three items are currently pending in city council process:

1. "Proposed Resolution Rescinding Berkeley Police Department's Pepper Spray Reporting Requirement." This proposal has passed through the Public Safety Committee with a qualified positive recommendation, and has been placed on the March 10 city council agenda.[1] [NOTE: Council passed an amended version of this proposal on March 10.]

On February 11, the Police Accountability Board (PAB) recommended to Council to continue the requirement for the submission of use of pepper spray reports. The PAB demonstrates that while the proposed resolution is predicated on the existence of redundant reporting, other reports lack narrative information and/or are inaccessible.[2]

2. "Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate Berkeley Police Department's Use of Tear Gas in Limited Situations and Lift the COVID-19 Moratorium on the Use of Smoke and Oleoresin Capsicum (OC) Spray:" This proposal has passed through the Public Safety Committee with a qualified positive recommendation.[3] The Police Accountability Board sent a memorandum to the Public Safety Committee questioning the necessity of resuming use of these chemical agents given how infrequently Berkeley has used them over several decades.[4]

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[1] March 10 2026 City Council agenda, item 17, https://berkeleyca.gov/sites/default/files/2026-02/2026-03-10%20Item%2017%20Resolution%20Rescinding%20Berkeley%20Police%20Department%E2%80%99s.pdf

[2] "Re: Resolution Rescinding Berkeley Police Department's Pepper Spray Reporting Requirement," Police Accountability Board, Feb. 23 2026, berkeleyca.gov/sites/default/files/2026-02/2026-02-23%20PAB%20Letter%20to%20Council_%20Use%20of%20Pepper%20Spray%20Reporting%20%281%29.pdf

[3] Public Safety Policy Committee Jan. 29 2026 agenda, item 4, 29, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-02-19%20Agenda%20Packet%20-%20Public%20Safety.pdf

[4] "Proposed Resolution to Reinstate Berkeley Police Department's Use of Tear Gas and Related Chemical Agents," Police Accountability Board, Jan. 26 2026,

3. "Resolution Rescinding Res. No. 51,408-N.S. Restricting the Use of Air Support and Canine Units and Updating Mutual Aid Policies": Scheduled for hearing at the Public Safety Committee at its next meeting.[5] As of March 9, the resolution is yet to be evaluated by the PAB.

The PAB's February 11 regular meeting included a table prepared by the Office of the Director of Police Accountability (ODPA). This table describes the key differences between the existing and proposed policies with regard to police dogs and helicopters. The table can be found at https://bit.ly/CopterDogProvisions. The ODPA gave this interpretation of the table:

> "The table … shows that the primary changes concern the approval process for requesting helicopter and canine use and the circumstances under which helicopter assistance may be requested through mutual aid agreements.
>
> "The previously permissible uses of helicopter assistance were limited to clearly defined humanitarian and emergency purposes, including disaster response, rescue efforts excluding hostage situations, and locating missing persons….
>
> "The proposal introduces new, explicitly enforcement-oriented justifications, including felony suspect pursuits, vehicle chases, and deployments intended to reduce risk to officers, that go beyond the scope of the earlier permissions. Taken together, the proposed resolution reflects a shift in emphasis from primarily emergency assistance toward authorizing helicopter use as a tactical law enforcement tool, should it be adopted."[6]

At the March 9 2026 meeting, the commission took the following action:

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https://berkeleyca.gov/sites/default/files/2026-02/2026-02-23%20PAB%20Letter%20to%20Council_%20Use%20of%20Pepper%20Spray%20Reporting%20%281%29.pdf

[5] Public Safety Policy Committee Jan. 29 2026 agenda, item 3, 21, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-02-19%20Agenda%20Packet%20-%20Public%20Safety.pdf

[6] "Police Accountability Board Meeting Agenda Packet," Feb. 11, 2026, 82-83, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2026-02-11%20PAB%20AGENDA%20PACKET.pdf

Action: M/S/C (Lippman/Taylor) to adopt the following recommendation: Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools:

1. Retain the existing 2020 bans on chemical weapons (CS and OC), and the 1982 bans on police dogs and helicopters.
2. Retain the 1997 requirement for public reporting of each use of pepper spray.
3. Request the City Manager to engage an academic institution such as UC Berkeley, UCSF, or Stanford to study the health impacts of tear gas and other chemical weapons and canine support, potential short-term and long-term impacts on vulnerable populations and possible alternatives to the use of chemical weapons that provide officer safety, suspect safety, and safety to the general public.

Ayes: Commissioners Phillips, Marasovic, Taylor, Sani, Morizawa, Lippman, McNeil and Press

Noes: Commissioner Fink

Abstain: Commissioners Yasavul, Weisberg, Elias, Mencher and Lee

Absent: Commissioner Cassidy

Excused: None

BACKGROUND

The resolutions currently under consideration by the city council amend or replace ordinances and policies approved by the council in previous years. The existing ordinances and policies include:

On July 15 1982, the City Council passed Resolution 51,408-N.S., establishing a policy for police use of dogs and helicopters from other law enforcement agencies, requiring prior approval by the City Manager, and only for specified purposes, excluding crowd control. See the 1982 policy referenced in Footnote 5.

On September 16 1997, the City Council established a policy that “every time pepper spray is used by the Police Department a Use of Pepper Spray Report similar to the Use of Force Report currently in effect will be completed and sent" to the Council and the Police Review Commission. See the 1997 policy referenced in Footnote 1.

On June 6 2020, in the wake of the murder of George Floyd by Minneapolis police, the City Council established a permanent ban on the use of CS (tear gas) and a moratorium on the use of OC (pepper spray) and smoke. The moratorium was in part due to the effect of the COVID-19 pandemic which caused respiratory distress to large numbers of people. It was also a step toward addressing over-policing and the use of military-style weaponry on civilians.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Physicians for Human Rights states that chemical irritants including both CS ("tear gas" and OC (pepper spray) can spread to affect people other than the intended target.[7] CS often has a wide spray pattern. OC is considered more targeted than CS, but wind can affect the direction of the fumes to affect bystanders and even the user.[8]

RATIONALE FOR RECOMMENDATION

1. Pepper Spray (OC) reporting.

The Peace and Justice Commission supports the PAB letter calling for the continuation of pepper spray use reporting. We would add that if the BPD intends to continue or even expand use of pepper spray, it is to their benefit that the community understand the context of its usage.

2. "Tear gas" (CS), Pepper Spray (OC), and Smoke

This is a complex proposal covering multiple chemical weapons.

The Peace and Justice Commission recommends Council retain the ban on CS ("tear gas") and the moratorium on OC and Smoke for these four reasons:

A. CS and OC are dangerous weapons that are properly considered "less-lethal," not "non-lethal."

B. CS and OC are particularly dangerous to the health of people with disabilities, especially respiratory or environmental sensitivities, and also those suffering from mental or behavioral disorders.

[7] "Health Impacts of Crowd-Control Weapons: Chemical Irritants (Tear Gas and Pepper Spray)," Physicians for Human Rights, Jan. 1 2017, https://phr.org/our-work/resources/health-impacts-of-crowd-control-weapons-chemical-irritants-tear-gas-and-pepper-spray/

[8] "Pepper Spray Safety Precautions," Sept. 12, 2024, https://www.divasfordefense.com/blogs/self-defense-articles-educational-material/pepper-spray-handling-safety-precautions?srsltid=AfmBOops00prGllerpYmjsPYnV5EIGesRj1WXJWr9Xrs5B8cuD6Hwos6

C. Approval of chemical weapons such as CS for any use opens the door to the possibility of use for other purposes and in other manners.

D. Berkeley's Precautionary Principle ordinance requires showing that actions do no harm to human health or the environment.

Dangers of CS ("tear gas"), particularly to people with disabilities

Over decades of research, scientists have shown a strong potential harm from CS use in policing. An Oakland Police Department policy warns,

> "Chemical agents can produce serious injuries, or even death," and officers are to "use the minimum amount of chemical agent needed to obtain compliance." Further, "the use of hand-thrown chemical agents or pyrotechnic gas dispersal devices may present a risk of permanent loss of hearing or serious bodily injury from shrapnel."

The common and incorrect term "tear gas" makes CS seem trivial. It is actually not even a gas but an aerosol, made up of ultra-fine particles, or UFPs. Aerosols are dangerous to lung health because, according to the U.S. National Library of Medicine,

> "The small size of UFPs allows them to penetrate deep into the respiratory tract, causing effects from mild respiratory issues to cardiovascular and respiratory mortality, lung cancer, neurological diseases, and mutagenic or carcinogenic impacts…. Substantial evidence links [ultrafine particulate matter] exposure to increased hospital admissions and premature deaths among vulnerable populations, particularly the elderly and those with pre-existing conditions."[9]

Potential for non-compliant or unauthorized uses of CS

The Commission appreciates the exception to ban use of CS in crowd control.

However, good policy is necessary but not sufficient for good practice. Once a weapon is acquired and approved for limited use, it is almost inevitable that it will be

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[9] Damiati, "Aerosol Pollutants and Health: Role of Size and Chemical Composition," Sept. 26 2025, https://pmc.ncbi.nlm.nih.gov/articles/PMC12466196/#:~:text=In%20densely%20populated%20areas%2C%20aerosols,COPD%20%5B31%2C%2032%5D.
For more on the effect of CS on the lung, particularly on "people with preexisting respiratory conditions, see:
American Lung Association, Jan. 20 2026, https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/toxic-air-pollutants/tear-gas

used for out-of-policy use. As an example, we refer to the last large-scale use of CS, the police response to Black Lives Matter protests in December 2014.

On December 6, BPD drove a largely peaceful march almost a mile down Telegraph from the UC campus past the Oakland city line. The direction from BPD command to the officers was to "Get'Um Running!" To implement this direction, officers shot less-lethal projectiles into the crowd, hit marchers with batons, and launched some 50 cans of CS gas, such a large amount that they nearly exhausted their supply. The Police Review Commission's (PRC) after-incident report stated:

> "The crowd complied with officer demands to move south, but the police continued to pursue them, deploying CS gas at six intersections on Telegraph and using raised batons and baton jabs. No evidence of dangerous crowd activity has been provided to the commission to justify these repeated uses of force.
>
> "The combination of repeated CS gas exposure along with the lengthy walk was extremely impactful, and there were reports of protestors suffering physical and emotional injuries as a result. The marchers were driven over the city line into Oakland around 1:30 AM."[10]

For context, in 1991, after an earlier scandal regarding police action against protestors in People's Park, the City enacted a policy that "no crowd could be forced to move faster than they were reasonably capable of moving." But in 2014, the use of mass quantities of CS along with baton strikes were ordered explicitly to drive protestors on a forced run all the way to Oakland.

As Physicians for Human Rights has observed, "The physical symptoms of chemical irritants often result in disorientation and agitation, which can lead to a state of fear, anxiety, and panic."[11] The 2014 use of CS was an escalation, not a move toward de-escalation, and made compliance with police orders extremely difficult.

Therefore, while CS use in crowd control was still legal in 2014, the manner of its use was contrary to City policy of that day. This recent history shows that stated policy is not enough to ensure that this department, when in possession of dangerous military armaments, will use them appropriately.

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[10] "Report of Investigation Into the Response to Protest on December 6, 2014," Berkeley Police Review Commission, Dec. 1 2015, https://berkeleyca.gov/sites/default/files/2026-01/2015-12-01-Item-32a-Report-of-Investigation.pdf

[11] "Health Impacts of Crowd-Control Weapons: Chemical Irritants (Tear Gas and Pepper Spray)," Physicians for Human Rights, Jan. 1 2017, https://phr.org/our-work/resources/health-impacts-of-crowd-control-weapons-chemical-irritants-tear-gas-and-pepper-spray/

Issues with OC (pepper spray) and smoke; the deadly and racially biased history of OC

The risk of OC should not be cavalierly dismissed by claiming, as the council proposal does, that "the specific health concerns that necessitated the temporary moratorium on smoke and OC spray are no longer present." The ACLU reported in 1998 that in the first five years since the approval of its use by police, at least 33 people had died in California after being sprayed and restrained. Nearby Antioch paid the family of 29-year-old Derek Wallace $362,000 after their officers subdued him with the spray.[12]

A Berkeley freelance journalist mapped the use of pepper spray in the mid 1990s and found that they largely affected Black men, in low-income, minority neighborhoods, and primarily an area in South Berkeley, centered on Alcatraz and Sacramento, dubbed the "Pepper Spray Triangle."[13]

Berkeleyans have long memories. The author of the resolution speaks of a "large-scale riot" in 2014 in which BPD was compelled to use tear gas on residents. Demonstrators for Black Lives Matter remember a largely peaceful march which was provoked by a police gauntlet in which many were beaten with batons. For many in the community, time has not abated the blow. Today, with the federal government at war with the people, may be the worst time to suggest restarting use of CS/tear gas.

Smoke also cannot be called a safe police tool. Health impacts are dependent on the chemicals in the smoke, pre-existing health conditions, location of the smoke, and other police tactics applied. According to medical experts, hexachloroethane smoke is "demonstrably more dangerous" than tear gas. This chemical agent should be studied and proven safe before approved for police use.[14]

There appear to be no constraints on the use of either OC or smoke in the proposal before council.

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[12] Heredia, "Antioch Settles Pepper Spray Case For $362,000 / 29-year-old man died after police subdued him," *SF Chronicle,* Feb 11 1998, https://www.sfgate.com/news/article/antioch-settles-pepper-spray-case-for-362-000-3013916.php

[13] *East Bay Express*, Dec. 12, 1997

[14] Foster, "The US Government Keeps Using Dangerous Chemicals on Protesters," *Mother Jones*, Feb. 19, 2026, https://www.motherjones.com/politics/2026/02/ice-facility-portland-what-chemicals-used-tear-gas-hc-smoke-protests/#:~:text=The%20smoke%20releases%20zinc%20chloride,and%20cancer%20with%20repeated%20exposure

The Commission reminds the Council of the Precautionary Principle that it adopted in 2006. The Principle is an approach to decision-making that prioritizes preventing harm to human health and the environment. The Principle shifts the burden of proof, requiring actions to be proven safe, rather than waiting for proof of damage to restrict them. We recommend that lacking proof of safety, the proposal to authorize CS, pepper spray, and smoke should not be approved.[15]

Given the prevalence of Long COVID, Berkeley's rapidly aging population, the large number of environmentally sensitive residents, and the city's legacy as the birthplace of disability rights, it is neither sensitive nor appropriate for the proposal to state that the emergency is over and the health conditions that necessitated the moratorium are no longer present.

3. "Air Support" (police helicopters) and "Canine Support" (police dogs)

The Peace and Justice Commission shares the ODPA's concerns about the shift in emphasis in use of helicopters from emergency assistance to tactical law enforcement.

Police helicopters provoke concern in a number of communities for "unhealthy noise pollution, inefficient spending and instances of bias by over-policing certain neighborhoods. Officers in the LAPD often disgracefully go so far as to call the helicopters 'ghetto birds,' sociologist Sarah Brayne wrote in her book *Predict and Surveil*."[16]

Berkeley restricted use of police dogs in the aftermath of their brutal use particularly in the South, but across the country as well.[17] In the last two decades, at least two lawsuits were settled by Hayward, one for $1.5 million. One dog is said to have bitten about 30 people, two or three of them uninvolved bystanders, one an 89-year-old who died of his wounds.[18]

The issues raised above with regard to chemical agents, about the Precautionary Principle, building trust between the people and the city government, and the possibility of out-of-policy use, apply also to helicopters and dogs.

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[15] BMC Chapter 12.29, Precautionary Principle, March 21, 2006, berkeleyca.gov/sites/default/files/documents/Precautionary%20Principle%20Ordinance%20-%206911.pdf

[16] McQuarrie, "'Ghetto birds': California has yet to reckon with longstanding bias from police helicopters," *CalMatters*, July 3 2024, https://calmatters.org/commentary/2024/07/california-longstanding-bias-police-helicopters/

[17] Dowd, "The Violent, Racist History of K-9 Units," *Vice*, Sept. 7 2022, https://www.vice.com/en/article/k9-unit-history/

[18] Parr, "Hayward to pay $1.5 million to settle police dog attack suit," *East Bay Times*, Jul. 17 2013, https://www.eastbaytimes.com/2013/07/17/hayward-to-pay-1-5-million-to-settle-police-dog-attack-suit/

The Commission is also concerned about the removal of required pre-approval by the City Manager for both dog and helicopter deployment. When taken as a pattern, the removal of this check combined with the refusal of the police chief to fully cooperate with the PAB/ODPA's City Charter-mandated requests for department records, the chronic under-appointing of the PAB, and the vacant position of Director of Police Accountability, the City risks a public perception that it no longer values civilian oversight.

ALTERNATIVE ACTIONS CONSIDERED
None

CITY MANAGER
Given that these policy matters are in the process of coming before the City Council, the City Manager will address them as they are heard by the City Council and recommends taking no action on them prior to the items being before the City Council.

CONTACT PERSON
Tasha Tervalon, Assistant to the City Manager, Commission Secretary, City Manager's Office, 510-981-7000

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Rashi Kesarwani
Councilmember, District 1

ACTION CALENDAR
July 14, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Resolution Reinstating the Berkeley Police Department's Ability to Use Tear Gas for Critical Life-Threatening Incidents Only and Lifting the COVID-19 Moratorium on Smoke and Oleoresin Capsicum (OC) Spray

RECOMMENDATION

Adopt a resolution amending the Berkeley City Council's June 9, 2020 direction regarding smoke, OC spray, and tear gas to allow the Berkeley Police Department (BPD) Special Response Team (SRT) to use tear gas under circumstances in which there is a significant risk of injury or death, maintain the prohibition on the use of tear gas solely for crowd control, and lift the temporary moratorium on the use of smoke and OC spray.

POLICY COMMITTEE RECOMMENDATION

On Thursday, February 19, 2026, the Public Safety Policy Committee adopted the following action: M/S/C (O'Keefe/Blackaby) to send the item with a Qualified Positive recommendation to Council that includes:

1) Making the resolution text explicit regarding permissible uses and policy limitations (particularly defining "critical incident" and excluding crowd control use),
2) Clarifying and attaching relevant use policies for public transparency, and
3) Developing an appropriate after-action reporting framework aligned with existing reporting and Transparency Hub practices.

The Police Accountability Board submitted a memo to the Committee expressing concern about the proposal, noting the infrequency of historical use and significant liability associated with chemical agents. The limitations identified in this resolution, restricting tear gas exclusively to SRT deployments in non-crowd critical incidents, directly address those concerns.

CURRENT SITUATION AND ITS EFFECTS

The Moratorium on the Use of Tear Gas, Smoke, and OC Spray Was Driven by Health-Related Concerns During the COVID-19 Pandemic. On June 9, 2020, the Berkeley City Council banned the use of tear gas under any circumstances by the

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Berkeley Police Department (BPD) and outside law enforcement agencies when providing mutual aid support in the City of Berkeley.[1] This action also placed a temporary moratorium on the use of smoke and OC spray. This action was largely driven by health-related concerns associated with COVID-19, a respiratory infection. Since this action was taken in June 2020, a COVID-19 vaccine is widely available and 89.4 percent of Alameda County residents are fully vaccinated, as of March 2023.[2] As a result, serious infection and hospitalization rates have dropped, and the public health state of emergency has long since ended. Therefore, the specific health concerns that supported the temporary moratorium on smoke and OC spray are no longer present. The combination of the reduced risk and the rare use of these tools make it appropriate to reevaluate this decision.

Existing BPD Policies Govern Use of Tear Gas, Smoke, and OC Spray. BPD Policy 300 (Use of Force), Policy 303 (Control Devices and Techniques), and Policy 428 (First Amendment Assemblies) governed the use of these tools before the Council's June 2020 action, and they will resume that role if the Council approves this item under consideration.[3] A summary of each of the three relevant policies is provided below.

Policy 300 (Use of Force)
Policy 300 establishes the overarching framework governing any use of force, including tear gas and OC spray, and its protections remain fully in place regardless of any change to the 2020 ban. Under Policy 300, all uses of force must be objectively reasonable, objectively necessary, and proportional to the circumstances. Officers are required to attempt de-escalation before resorting to force, and the policy explicitly requires that force be minimized at all times. Every deployment of tear gas or OC spray constitutes a Level 3 use of force, triggering mandatory documentation requirements: the involved officer must prepare a written report articulating why the use of force was objectively reasonable and necessary, an uninvolved supervisor must respond to the scene when feasible, conduct an investigation, photograph injuries, identify witnesses, and review body-worn camera footage. The Chief of Police reviews all use-of-force reports and makes a finding of whether the use was within policy. Reports are retained for at least five years and reported publicly on a quarterly basis to the Police Accountability Board and annually to the City Council.

Policy 303 (Control Devices and Techniques)
Policy 303 governs the specific conditions under which chemical agents, including tear gas and OC spray, may be deployed, and incorporates the requirements of California Penal Code Section 13652 directly into BPD policy. Under Policy 303, kinetic energy projectiles and chemical agents may only be used by officers who have received POST-certified crowd control training, and

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[1] June 9, 2020 4:00pm Special Meeting Annotate Agenda: https://berkeleyca.gov/sites/default/files/city-council-meetings/06-09%20Annotated%20Agenda%204pm.pdf p. 5 of 13.

[2] According to the Vaccine Dashboard on the Alameda County website, 89.4% of the county has been fully vaccinated as of March 2023: https://www.alamedaca.gov/RESIDENTS/ALERTS-COVID-19/Vaccine/Vaccine-Dashboard

[3] See Berkeley Police Department Law Enforcement Manual for details of each policy: https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf. Each is additionally attached.

only when objectively reasonable to defend against an active threat to life or serious bodily injury or to bring an objectively dangerous and unlawful situation safely under control. Before deployment, de-escalation must have been attempted and failed; repeated, audible announcements of intent to deploy must be made from multiple locations and in multiple languages where appropriate; and persons must be given a reasonable opportunity to disperse. Officers must make an objectively reasonable effort to distinguish individuals engaged in violent acts from those who are not, and chemical agents must be targeted accordingly — never fired indiscriminately into a crowd. Use must be proportional and minimized to reduce incidental impact on bystanders, journalists, and medical personnel. Medical assistance must be provided promptly when safe to do so. Separately, Policy 303 expressly reiterates that tear gas remains prohibited for crowd control — only SRT use in critical, non-crowd incidents is authorized under the proposed resolution.

Policy 428 (First Amendment Assemblies)
Policy 428 provides additional protections specifically applicable to crowd situations where smoke and OC spray may be deployed. Under Policy 428, the use of any chemical agent in a crowd context is subject to the direction of the Field Commander, who determines both the type and quantity of agents to be used and must continuously re-evaluate whether their use remains necessary. The policy prohibits the use of chemical agents against individuals engaged only in passive resistance and bars their use solely due to a curfew violation, verbal threat, or noncompliance with a directive — consistent with California Penal Code Section 13652. Officers must issue dispersal orders prior to forcibly dispersing a crowd absent exigent circumstances, and must make reasonable efforts to provide medical resources and extract individuals in distress. Following any crowd incident in which smoke or OC spray is deployed, Policy 428 requires a comprehensive After Action Report documenting arrests, injuries, property damage, personnel costs, and a full inventory of all less-lethal munitions deployed. Additionally, for OC spray deployments in crowd situations, a public summary must be posted to the department's website within 60 days of the incident, extendable to 90 days for good cause, per Policy 428 Section 428.14(c) and California Penal Code Section 13652.1.

State Law Adds Further Guardrails for the Use of Tear Gas. Since 2020, the California Legislature has added new language that clearly articulates the circumstances under which chemical agents, including tear gas, may be used. California Penal Code Section 13652 (AB 48, effective January 1, 2022) prohibits the use of chemical agents to disperse any assembly, protest, or demonstration except where objectively reasonable to defend against an active threat to life or serious bodily injury, and requires that the use be proportional, targeted at individuals engaged in violence rather than at a crowd indiscriminately, and preceded by de-escalation efforts where feasible. The law also expressly prohibits use solely in response to a curfew violation, verbal threat, or noncompliance with a directive. These legislative updates are already reflected in the Department's broader use-of-force framework.[4]

[4] On September 20, 2021, Governor Newsom signed Assembly Bill 48 into law, adding California Penal Code Section 13652 (restrictions on the use of chemical agents and kinetic energy projectiles) and Section 13652.1 (public reporting requirements) both effective January 1, 2022. See: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48)(https://leginfo.legi

Subsequent to the temporary ban, on July 26, 2022, the Council approved BPD Policy 709, Military Equipment, which authorized the continued funding, acquisition, and use of military equipment including tear gas (CS and OC canisters) in accordance with Assembly Bill 481. The Council's 2022 approval of Policy 709, which encompasses tear gas in BPD's military equipment inventory, demonstrates that the Council understood the 2020 action as a restriction on the use of tear gas, not a directive to eliminate it from the Department's inventory altogether.

Tear Gas for Life-Threatening Situations and the Use of Smoke and/or OC Spray in a Crowd Situation Allows Officers to Respond Without Escalating to Higher Levels of Force. Officers tasked with deploying tear gas are members of the Department's Special Response Team (Special Weapons and Tactics/SWAT), who train annually with certified Department instructors and have received specific training on the safe and proper use of this equipment. Although an essential law enforcement tool, tear gas is reserved for high-risk, low-frequency events—armed standoffs, hostage situations, high-risk warrant service, and encounters where shots have been fired. Restricting its use to the Special Response Team ensures this capability is available for precisely the dangerous scenarios where it is needed most, enabling officers to prompt suspect compliance and limit a subject's capacity to inflict harm without requiring physical breach or escalation to lethal force. OC spray and smoke serve an analogous function in crowd situations: interrupting active violence, creating distance between opposing groups, and allowing officers to respond proportionally rather than escalating to higher levels of force.

De-Escalation and Minimizing Levels of Force. Tear gas allows officers to influence behavior, compel compliance, and interrupt active violence without physical contact or escalating to a higher level of force, including lethal force. By creating distance and slowing an encounter, it reduces the likelihood of serious injury for officers, suspects, and bystanders alike. Authorizing tear gas for SRT tactical incidents is directly consistent with the City and Department commitment to de-escalation.

Tactical Effectiveness in Critical Incidents. For the use of these tools, a critical incident is defined as a rapidly evolving or complex, high-risk event in which the subject poses a threat to life or substantial risk of serious bodily injury, and conventional tactics are unlikely to resolve the situation safely. These incidents typically involve armed, barricaded, or violent individuals who are actively resisting lawful commands and have demonstrated the capacity and intent to cause harm. In barricade and hostage situations, tear gas provides a standoff capability that physical entry cannot; gas can permeate rooms, reach behind cover, and enter through small openings. This enables resolution of prolonged, high-risk incidents faster and more safely than the alternatives (physical breach or extended standoffs), which carry significantly higher risks to all parties. Tear gas also enables safe extractions, allowing officers to remove hostages or injured individuals while a suspect is suppressed.

Risk to the City and Accountability. Without this industry-standard tool, BPD's SRT faces critical gaps in its ability to safely manage armed standoffs, hostage situations,

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slature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=13652. This law embodies many principles currently in BPD's Policies 300 (Use of Force), 303 (Control Devices and Techniques), and 428 (First Amendment Assemblies) and aligns with the community's and the department's values related to the use of force.

and active-threat incidents, creating unnecessary risk for officers, the community, and the City. Every deployment of tear gas requires supervisor authorization and is subject to policy review, documentation, and the use-of-force framework established under Policies 300, 303, and 428. This limitation also restricts BPD's ability to serve as a full partner in regional mutual aid responses.

Smoke and OC Spray: De-Escalation and Safety in Crowd Situations
Like tear gas in critical incidents, smoke and OC spray serve as lower-level force options that support de-escalation and officer and public safety specifically in crowd contexts. Smoke can create a visual barrier, interrupt active violence between groups, and allow officers to reposition or withdraw without direct physical engagement. OC spray allows officers to respond to targeted acts of violence with a proportional, less-lethal tool rather than escalating to physical force or impact weapons. Together, these tools give officers the ability to manage volatile situations more safely, reduce the likelihood of injury on all sides, and maintain tactical options that support de-escalation rather than requiring an immediate escalation of force. The following examples illustrate how each tool would be used:

Examples by Tool
The following examples illustrate the types of incidents for which each tool may be deployed.
Tear gas: for use in critical incidents only (not crowd control):
- Armed barricaded suspect refusing to exit an enclosure;
- Suspect shooting at officers during a high-risk SRT warrant service;
- Hostage rescue situations; and
- Other high-risk situations presenting an imminent threat of death or serious bodily injury, such as injured officer or citizen rescue where a suspect must be suppressed.

Smoke: for use in crowd situations involving active violence:
- Violence between two opposing groups;
- Officers repositioning away from a violent crowd; and
- Directing a crowd away from an area of active violence.

OC Spray: for targeted use in crowd situations:
- A specific individual committing violence against another person; and
- A specific individual committing violence against an officer.

After Action Documentation and Reporting of Incidents
All deployments of tear gas and OC spray are classified as Level Three (chemical agent) uses of force and are subject to the reporting requirements outlined in Policy 300. Policy 300 requires that all uses of force be documented promptly, completely, and accurately in an appropriate report. The officer must articulate the factors perceived and why the use of force was objectively reasonable and necessary under the circumstances. Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the appropriate level of reporting, investigation, documentation, and review. After an incident, an uninvolved supervisor, when feasible, will respond to the scene, conduct an investigation, and complete a Use of Force Investigation Report. The supervising officer is expected to:

- Obtain the basic facts from the involved officers;
- Ensure any injured parties are examined and treated;

- After initial medical assessment and/or first aid has been rendered, ensure that photographs have been taken of any injuries or areas corresponding to complaints of pain;
- Identify witnesses not already included in related reports;
- Review and approve all related reports; and
- Review body-worn camera footage related to the incident.

In addition to the internal use of force documentation required under Policy 300, California Penal Code Section 13652.1 requires the Department to publish a summary of each tear gas or OC spray deployment for crowd control on the Department's website. This public reporting requirement does not apply to smoke, which is not a chemical agent under that statute.[5]

Reporting Requirements for Smoke and OC Spray in a Crowd Situation
Both smoke and OC spray, if used within the context of a crowd situation, are governed under Policy 428 (First Amendment Assemblies, attached) and are subject to the post-event reporting requirements stipulated in section 428.14. Those requirements apply to all less-lethal munitions deployed in a crowd context, including smoke and OC spray, and require documentation of arrests, injuries, property damage, personnel costs, and the inventory of all less-lethal munitions deployed, including smoke and chemical agents.

In addition, for OC spray deployments specifically, Policy 428, section 428.14(c) and California Penal Code Section 13652.1 require that the BPD prepare and publish a public summary on the Department's website within 60 days of the incident, extendable to 90 days for good cause. That summary must include the information required under Penal Code Section 13652.1. Smoke is not a chemical agent under PC 13652 and is not subject to this public posting requirement; however, its use will be documented and publicly available through the Policy 428 post-event report.

As a new commitment established by this item: upon posting of any required public summary to the Department website, the Department shall notify the City Manager, who will provide this information to the City Council and to the Police Accountability Board within ten days of notice.

Tear gas and OC spray deployments will also be reported under Use of Force on the Transparency Hub and as well as annually via the Berkeley Municipal Code 2.100 Police Equipment Ordinance. Additionally, the City Council's March 11, 2026, resolution requires BPD to enhance Use of Force level definitions on the Transparency Hub and include clear navigational guidelines so the public can easily access information on chemical agent use, including tear gas and OC spray.

BACKGROUND

Tear Gas Has Been Deployed for One Special Response Team Incident Over the Last 40 Years. The Department reserves the use of chemical agents and smoke for limited, high-risk situations where it is necessary to safely resolve dangerous incidents

and protect the public, officers, and property. Because the use of tear gas is reserved for these types of situations, the department has deployed this tool on only limited occasions over the last +40 years: once in response to a barricaded subject and twice in response to crowd violence. In all instances, the objective was to compel movement out of a building or away from officers, to achieve resolution of a critical incident. A brief summary of each incident follows:

- In the early 2000s, the Special Response Team used tear gas during a warrant service involving an armed individual who refused to surrender. The deployment created the conditions needed for officers to take the suspect into custody without injury.
- In December 2014, the Department used tear gas during a large-scale civil unrest in Berkeley. Officers were assaulted with rocks and bottles, and despite repeated warnings and lawful orders to disperse, the violence escalated. Tear gas, smoke, and OC spray were deployed to stop the assaults and ongoing property destruction. Multiple officers were injured during the incident.
- In May 2020, Berkeley officers responded to an Oakland Police Department mutual-aid request and were deployed in Oakland during the civil unrest following the murder of George Floyd. Officers were assigned to protect OPD's main station when several thousand individuals attempted to force their way to the station with the intention of destroying it. Officers came under attack from rocks, bottles, Molotov cocktails, and commercial-grade fireworks. Tear gas and less-lethal munitions were deployed to protect officers from the life-threatening assaults they were facing while protecting critical infrastructure.

The Department has deployed smoke on several occasions in conjunction with the incidents described above. Smoke was deployed during the December 2014 civil unrest and during the May 2020 Oakland mutual aid response alongside tear gas. Additionally, on August 27, 2017, an officer deployed a smoke canister into a crowd actively engaged in violent confrontations to interrupt the violence and compel the group to disperse.

Police Review Commission Supported the Use of Tear Gas Only by the Special Response Team in a 6-1-1 Vote on September 23, 2020. The Police Review Commission evaluated the moratorium enacted by the City Council and recommended a revision to the tear gas policy to allow the Special Response Team to use it during tactical operations.[6] The motion read as follows:

> **303.6 TEAR GAS GUIDELINES** Tear gas may only be used by trained members of the Special Response Team during SRT tactical operations (e.g., during barricaded subject operations or responding to armed attacks during an SRT operation), in accordance with Policy 300, to protect people from the risk of serious bodily injury or death.
>
> The above paragraph notwithstanding, as per City Council policy (June 9, 2020), the use of tear gas by any employees of the Berkeley Police Department, including the Special Response Team, is prohibited in crowd control and crowd management situations.

[6] Police Review Commission Regular Meeting Minutes, Sept. 23, 2020, https://records.cityofberkeley.info/PublicAccess/paFiles/cqFiles/index.html

When practicable, fire personnel should be alerted or summoned to the scene prior to deployment of tear gas by SRT, in order to control any fires and to assist in providing medical aid or gas evacuation if needed.

ENVIRONMENTAL SUSTAINABILITY

There are no significant or lasting environmental concerns regarding the use of tear gas, smoke, or OC spray at the frequency and in the contexts contemplated by this item. Tear gas disperses quickly once air circulation improves, and the compounds break down without leaving persistent residue in soil or water. OC spray is derived from natural capsicum, is biodegradable, and does not present persistent environmental concerns. Expired OC canisters are disposed of in accordance with standard hazardous materials protocols. Smoke canisters produce particulate matter at the point of detonation; however, dispersal is rapid and there are no known persistent soil, water, or air quality impacts from the limited tactical deployments contemplated by this item. The infrequency of use (tear gas has been deployed three times in over 40 years, smoke on a similarly limited basis) and the contained or outdoor environments in which these tools would be deployed further minimize any environmental impact. No significant or lasting environmental impacts are anticipated from adoption of this resolution.

RATIONALE FOR RECOMMENDATION

Both the California Commission on Peace Officer Standards and Training (CA POST) and the National Tactical Officers Association (NTOA) consider tear gas basic required equipment for SWAT teams. Its value lies in providing a less-lethal option that creates distance between officers and dangerous subjects, reducing the need for close-quarters force or lethal action. The 2020 ban was not premised on opposition to tactical use, but on COVID-19 respiratory concerns and crowd control misuse, neither of which applies to the narrow Special Response Team authorization proposed here.

FISCAL IMPACTS

The fiscal impacts of adopting this resolution are minimal; equipment costs associated with this recommendation pertain to inventory replacement depleted during trainings or through use or due to expiration. Replacement costs are approximately $2,000 annually. Training costs will be nominal as associated fees will be reincorporated into existing budgeted training sessions.

CONTACT PERSON

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

Attachments:

1. Resolution
2. Berkeley Police Department Law Enforcement Services Manual Policy 300: Use of Force
3. Berkeley Police Department Law Enforcement Services Manual Policy 303:

Control Devices and Techniques
4. Berkeley Police Department Law Enforcement Services Manual Policy 428: First Amendment Assemblies
5. Policy 709 Military Equipment
6. BPD Special Order 2020-0007: Prohibition on Tear Gas, Pepper Spray, and Smoke

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

RESOLUTION REINSTATING THE BERKELEY POLICE DEPARTMENT'S ABILITY TO USE TEAR GAS FOR LIFE-THREATENING CIRCUMSTANCES AND LIFTING THE COVID-19 MORATORIUM ON SMOKE AND OLEORESIN CAPSICUM (OC) SPRAY

WHEREAS, on June 9, 2020, the Berkeley City Council placed a temporary ban on the use of smoke and OC spray, and a permanent ban on the law enforcement use of tear gas; and

WHEREAS, the temporary ban on smoke and OC spray was enacted due to respiratory concerns associated with the COVID-19 pandemic, and the state of emergency for the pandemic has since ended; and

WHEREAS, on July 26, 2022, two years after the June 9, 2020 ban on the use of tear gas, the Berkeley City Council approved Berkeley Police Department Policy 709, Military Equipment, which authorized the continued funding, acquisition, and use of military equipment including tear gas, pursuant to Assembly Bill 481, reflecting the Council's understanding that the 2020 action restricted the deployment of tear gas rather than directing its removal from the Department's inventory; and

WHEREAS, access to tear gas enables the police department to resolve dangerous and high-risk situations with less force, in a manner that supports safer outcomes for all; and

WHEREAS, the Berkeley Police Department seeks a limited, narrow use of tear gas exclusively by members of the Special Response Team when responding to critical incidents, defined as rapidly evolving or complex, high-risk events posing a significant threat of death or serious bodily injury in which conventional tactics are unlikely to resolve the situation safely, including but not limited to: armed barricaded suspects refusing to exit an enclosure; suspects shooting at officers during a high-risk warrant service; hostage rescue situations; and other potential high-risk situations outside these categories that present a threat to officer or public safety. This authorization expressly does NOT include use for crowd control; and

WHEREAS, the use of smoke and OC spray by the Berkeley Police Department is governed by Policies 300 (Use of Force), 303 (Control Devices and Techniques), and 428 (First Amendment Assemblies). OC spray is authorized as a use of force, and smoke as a non-force tactical tool, in crowd situations to address: violence between opposing groups; violence committed by a specific individual against another person or an officer; directing a crowd away from an area of active violence; or when distance is needed for officers repositioning away from a violent crowd; and

WHEREAS, the Berkeley Police Department Policies 303 (Control Devices and Techniques), 300 (Use of Force), and 428 (First Amendment Assemblies) ensure proper use and oversight, consistent with California Penal Code Section 13652(b);

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the June 9, 2020, ban on the use of tear gas is hereby modified to authorize the Berkeley Police Department's Special Response Team to use tear gas when responding to critical incidents as defined that pose a significant threat to public or

officer safety, and excluding its use solely for crowd control, in accordance with Policies 300, 303, and 428, and that the temporary moratorium on the use of smoke and OC spray is hereby lifted.

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Use of Force

300.1 SANCTITY OF LIFE

The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force. Officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

300.1.1 PURPOSE AND SCOPE

This policy sets forth criteria governing the use of force. All officers are responsible for knowing and complying with this policy and conducting themselves in a manner that reflects the Berkeley Police Department's Use of Force Core Principles. Violations of this policy may result in disciplinary action, including and up to termination, and may subject the officer to criminal prosecution. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it.

300.1.2 USE OF FORCE STANDARD

In dealing with suspects, officers shall use alternatives to physical force whenever reasonably possible. In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.

The United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), held that, in order to comply with the U.S. Constitution, an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force. But these standards merely set the minimum standard for police conduct, below which an officer's conduct would be regarded as unlawful.

In fulfilling this Department's mission to safeguard the life, dignity, and liberty of officers themselves and all members of the community they are sworn to protect and serve, this policy requires more of our officers than simply not violating the law. As a result, this policy is more restrictive than the minimum constitutional standard and state law in two important respects.

First, it imposes a higher duty upon officers to use a minimal amount of force objectively necessary to safely achieve their legitimate law enforcement objective. And, second, this policy imposes a stricter obligation on officers to exert only such force that is objectively proportionate to the circumstances, requiring a consideration of the seriousness of the suspected offense, the availability of de-escalation and other less aggressive techniques, and the risks of harm presented to members of the public and to the officers involved.

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Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force.

300.1.3 CORE PRINCIPLES

A. DE-ESCALATION AND FORCE MINIMIZATION. Every officer's goal, throughout an encounter with a member of the public, shall be to de-escalate wherever possible and resolve the encounter without resorting to the use of force. Wherever possible, officers shall employ de-escalation techniques to increase the likelihood of voluntary compliance with law enforcement requests or directives and, thereby, decrease the likelihood that a use of force will become necessary during an incident. Further, in any encounters that do call for applying force, officers must always use a minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective.

B. **PROPORTIONALITY**. When determining the appropriate level of force, at all times officers shall balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is unarmed or armed with a weapon other than a firearm.

C. MINIMIZING THE USE OF DEADLY FORCE. Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons

D. DUTY TO INTERCEDE. Whenever possible, officers shall intervene when they know or have reason to know that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

E. VULNERABLE POPULATIONS. Officers should be particularly sensitive when considering the use of force against vulnerable populations, including children, elderly persons, pregnant women, people with physical and mental disabilities, and people with limited English proficiency.

F. **FOSTER STRONG COMMUNITY RELATIONSHIPS.** The Berkeley Police Department understands that uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community. The Department is committed to fostering strong community relations by building on its historic tradition of progressive policing, ensuring accountability and transparency, and striving to increase trust with our community.

G. FAIR AND UNBIASED POLICING. Members of the Berkeley Police Department shall carry out their duties, including the use of force, in a manner that is fair and unbiased, in accordance with Policy 401, Fair and Impartial Policing.

300.1.4 DEFINITIONS

Definitions related to this policy include:

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Minimal amount necessary – The least amount of force within a range that is objectively reasonable and objectively necessary to safely effect an arrest or achieve some other legitimate law enforcement purpose.

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows themselves to be searched, escorted, handcuffed or restrained.

Less-Than-Lethal Force – Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options. Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

Non-Lethal Force – Any use of force other than lethal force or less-than lethal force.

Compliant Suspect – Cooperative and/or responsive to lawful commands.

Passive Resistance - When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way.

Examples: A person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.

Active Resistance - An individual who is uncooperative and fails to comply with the lawful verbal commands of a police officer, and attempts to avoid physical control and/or arrest by physically struggling to free oneself from being restrained. The individual may also use verbal non-compliance (refusing a lawful order or direction).

Examples: A person who attempts to avoid physical control and/or arrest by pulling or pushing away from the officer, tensing arm or muscles, hiding from the officer, and/or fleeing.

Combative Resistance - An individual not only resists the officer, but poses a threat of harm to the officer or others, in an aggressive manner that may cause physical injury.

Examples: A person who violently attempts to or attacks an officer. This action is sometimes preceded by “pre-assault” cues such as taking a threatening stance (clenching fists, facial expressions, threats, etc.) and verbal non-compliance.

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Control Hold - Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.). A control hold can be applied without implementing pain.

Pain Compliance Technique - Involves either the manipulation of a person's joints or activating certain pressure points intended to create sufficient pain for the purpose of motivating a person to comply with verbal commands (examples of pressure points include buccal nerve, gum nerve, sternum rub).

Control Techniques – Personal Impact Weapons and Take Downs.

Personal Body Weapons - An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of kinetic energy transfer (impact) to gain control of a subject.

Blue Team (BT) – Computer software that allows officers to enter use of force and other incidents from a Department computer.

Concealment - Anything which conceals a person from view.

Cover - Anything which provides protection from bullets or other projectiles fired or thrown. Cover is subjective and its effectiveness depends upon the threat's ballistic capability (handgun, rifle, etc.).

Blocking - The positioning of a police vehicle in the path of an occupied subject vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal.

Ramming - The use of a vehicle to intentionally hit another vehicle

Serious bodily injury - A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement or results in a prolonged loss or impairment of the functioning of any bodily member or organ

Officer (or) Police Officer - Any sworn peace officer.

Authorized Employee - Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.

Employee – Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."

Objectively Reasonable – "Objectively reasonable" means an officer's conduct will be evaluated through the eyes of the hypothetically reasonable officer standing in the shoes of the involved officer.

Totality of the circumstances – All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force.

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300.2 DUTY TO INTERCEDE AND DUTY TO REPORT

Any officer who observes another officer or member of the Berkeley Police Department using force that is clearly in violation of this policy shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, when in a position to do so, physical intervention. Further, any officer who learns of a potentially unauthorized use of force, even if the officer did not witness it personally, shall promptly report this information to an on-duty sergeant or a command officer at the first opportunity.

Any officer who observes an employee or member of a different law enforcement agency use force that exceeds the degree of force permitted by law shall promptly report these observations to an on-duty sergeant or a command officer at the first opportunity.

300.2.1 FAILURE TO INTERCEDE

An officer who has received the required training on the duty to intercede and then fails to act to intercede when required by law, may be disciplined in the same manner as the officer who used force beyond that which is necessary (Government Code § 7286(b)).

300.3 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable, objectively necessary, and proportional force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. For the purpose of this policy, "retreat" does not mean tactical repositioning or other de-escalation tactics.

300.3.1 FACTORS USED TO DETERMINE THE REASONABLENESS, NECESSITY, AND PROPORTIONALITY OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable, objectively necessary, and proportional force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

(a) The apparent immediacy and severity of the threat to officers or others.

(b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.

(c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).

(d) The conduct of the involved officer.

(e) The effects of drugs or alcohol.

(f) The individual's apparent mental state or capacity.

(g) The individual’s apparent ability to understand and comply with officer commands.

(h) Proximity of weapons or dangerous improvised devices.

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(i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.

(j) The availability of other reasonable and feasible options and their possible effectiveness.

(k) Seriousness of the suspected offense or reason for contact with the individual.

(l) Training and experience of the officer.

(m) Potential for injury to officers, suspects, bystanders, and others.

(n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.

(o) The risk and reasonably foreseeable consequences of escape.

(p) The apparent need for immediate control of the subject or a prompt resolution of the situation.

(q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.

(r) Prior contacts with the subject or awareness of any propensity for violence.

(s) Any other exigent circumstances.

The level of resistance that an officer encounters is a key factor in determining the proportionate amount of force**.** It is not possible to determine ahead of time what the proportionate level of force is for every possible situation that officers may face. Nevertheless, one of the key factors in determining what level of force is objectively reasonable, objectively necessary, and proportionate in a given situation is the level of resistance that an officer encounters. In general, the less resistance an officer faces, the less force the officer should use. The types of resistance officers may encounter fall along a continuum, from a cooperative person to an active assailant. Consistent with training, the following general rules apply when officers are exercising judgment in determining what level of force is necessary and proportionate:

- Compliant – In general, when dealing with a compliant person, officers may rely on police presence and/or verbal control techniques, but should not use greater force.
- Passive resistance – In general, when dealing with a suspect involved in passive resistance, officers may rely on police presence, verbal control techniques, or control holds, but should not use greater force.
- Active resistance – In general, in dealing with a suspect involved in active resistance, in addition to the options available for passive resistance, officers may rely on pain compliance techniques or takedowns, but should not use greater force.
- Combative resistance – In general, in dealing with a suspect involved in combative resistance, officers have all use-of-force options available to them, but deadly force shall only be used in compliance with this policy as described in Section 300.4.

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300.3.2 USE OF FORCE CONTINUUM

The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively necessary, and proportional, based on a totality of the circumstances. All progressions must rest on the premise that officers shall escalate and de-escalate their level of force in response to the subject's actions.

Continuum of Force

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
  - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
  - Officers' attitudes are professional and nonthreatening.
- **Verbalization — Force is not physical.**
  - Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
  - Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Weaponless defense — Officers use bodily force to gain control of a situation.**
  - Pain Compliance and control holds. Officers use grabs, holds and joint locks to restrain an individual.
  - Personal body weapons. Officers may use punches and kicks to restrain an individual.
- **Less-Lethal Force Methods — Officers use less-lethal technologies to gain control of a situation.**
  - Blunt impact. Officers may use a baton or projectile to immobilize a combative person.
  - Chemical. Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
- **Lethal Force — Officers may use lethal weapons only in compliance with Section 300.4.**

300.3.3 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be

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restricted. Officers are encouraged to use techniques and methods taught by the Berkeley Police Department for this specific purpose.

300.3.4 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and shall be used when it is safe to do so, De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. Officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.

The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.

If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member shall be called upon as a resource.

Officers shall gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to any levels of force. Officers should move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

(a) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; "waiting out" subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.

(b) Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.

(c) Officers should consider a variety of options, including lesser force or no force options.

(d) Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest.

(e) A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.

(f) Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use of force.

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(g) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis Intervention techniques.

(h) Establishing communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

(i) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

When time and circumstances allow, officers shall consider the following tactical principles:

1. Make a tactical approach to the scene.
2. Maintain a safe distance.
3. Use available cover or concealment and identify escape routes.
4. Stage Berkeley Fire Department.
5. Control vehicle and pedestrian traffic.
6. Establish communication, preferably with one officer.
7. Create an emergency plan and a deliberate plan with contingencies.
8. The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

300.3.5 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

(a) The degree to which the application of the technique may be controlled given the level of resistance.

(b) Whether the person can comply with the direction or orders of the officer.

(c) Whether the person has been given sufficient opportunity to comply.

The purpose of pain compliance is to direct a person's actions. The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.6 USE OF NON-LETHAL FORCE

When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use objectively reasonable, objectively necessary, and proportional approved non-lethal force techniques and weapons in the following circumstances:

(a) To protect themselves or another person from physical injury;

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(b) To restrain or subdue a resistant individual; or

(c) To bring an unlawful situation safely and effectively under control.

300.3.7 RESTRAINT AND CONTROL DEVICES

Restraint and control devices shall not be used to punish, to display authority or as a show of force. Handcuffs, body wraps and spit hoods shall only be used consistent with Policy 302. Batons, approved less-lethal projectiles, and approved chemical agents shall only be used consistent with Policy 303. As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited. Pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

300.3.8 CHOKEHOLD PROHIBITION

The use of a Carotid Restraint Hold is prohibited. Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., February 14, 1985, “Prohibiting use of ‘chokehold’ for law enforcement purposes in the City of Berkeley” states: “Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley.”

The term bar-arm refers to a variety of techniques. The use of any chokehold is strictly prohibited. A chokehold is any hold or contact with the neck – including a carotid restraint -- that may inhibit breathing by compression of the airway in the neck, may inhibit blood flow by compression of the blood vessels in the neck, or that applies pressure to the front, side, or back of the neck. As defined in the City Council Resolution, “bar-arm hold” refers to use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.

300.3.9 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence or pre-existing medical conditions. While it is impractical to restrict an officer's use of reasonable control methods when attempting to restrain a combative individual, officers are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once the individual is safely secured, officers should promptly check and continuously monitor the individual's condition for signs of medical distress (Government Code § 7286.5).

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300.4 USE OF DEADLY FORCE

An officer's use of deadly force is justified only when it is objectively reasonable, based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided that it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Penal Code § 835a).

An officer shall not use deadly force against another person if it reasonably appears that doing so would unnecessarily endanger innocent people.

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

Officers shall not use deadly force against a person based on the danger that person poses to themself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

300.4.1 DRAWING AND POINTING FIREARMS

Given that individuals may perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines:

(a) If the officer does not initially perceive a threat but it is objectively reasonable that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.

(b) If it is objectively reasonable that a significant threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward said threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

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300.4.2 DIRECTED FIRE

Officers may use controlled gunfire that is directed at the suspect, reducing the suspect's ability to return fire while a group or individual movement is conducted, such as in a rescue operation.

Officers may only employ this tactic when dealing with a suspect who poses an immediate and ongoing lethal threat and only under circumstances where the use of deadly force is legally justified. Target acquisition and communication are key elements in the successful use of this tactic. Officers remain accountable for every round fired under these circumstances. Officers must consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.

300.4.3 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of deadly force. When feasible, officers shall take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

Because this policy may not cover every situation that may arise, a deviation from this policy may be objectively reasonable and objectively necessary depending on the totality of the circumstances. A deviation from this policy would, for instance, be justified if the officer used a firearm in an attempt to stop an imminent vehicle attack on a crowd or a mass casualty terrorist event.

Factors that may be used to evaluate the reasonableness of the use of a firearm against a vehicle include:

(a) The availability and use of cover, distance and/or tactical relocation

(b) Incident command and personnel placement

(c) Tactical approach

(d) Regard for viable target acquisition and background including location, other traffic, the presence of innocent persons, and police officers.

300.5 USE OF VEHICLES

Officers shall not use police vehicles to ram other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except under circumstances outlined in section 300.4 and in Policy V-6 that covers vehicle operations.

The Vehicle Containment Technique (VCT) is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be

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minimal. VCT shall only to be used on vehicles that are either stationary or moving at a slow speed. This technique is designed to contain a suspect vehicle to a single stationary location, thereby preventing a pursuit from initiating, or a potentially violent situation (e.g. a hostage situation or person barricaded inside a vehicle) from becoming mobile.

When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation. See the VCT policy for more details on this tactic.

300.5.1 REPORT RESTRICTIONS

Officers shall not use the term "excited delirium" to describe an individual in an incident report. Officers may describe the characteristics of an individual's conduct, but shall not generally describe the individual's demeanor, conduct, or physical and mental condition at issue as "excited delirium" (Health and Safety Code § 24402).

300.6 REPORTING REQUIREMENTS

All uses of force shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident and the level of force used. The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a “Use of Pepper Spray Report.” Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a “Use of Restraint Device Report” and document, review and report such uses in accordance with section 300.11.

Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation, documentation and review requirements.

300.6.1 SUPERVISOR RESPONSIBILITY

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to:

(a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.

(b) Ensure that any injured parties are examined and treated.

(c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.

(d) Identify any witnesses not already included in related reports.

(e) Review and approve all related reports.

(f) Review body worn camera footage related to the incident.

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In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.6.2 USE OF FORCE REPORTING LEVELS

Level 1

The officer used any of the following, and the circumstances of the application would lead an objectively reasonable officer to conclude that the subject did not experience more than momentary discomfort:

1. Control holds/ pain compliance techniques
2. Leverage
3. Grab
4. Bodyweight
5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.
6. Takedown

If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

Level 2

(a) No suspect injury or complaint of continuing pain due to interaction with officer.

(b) Officer's use of force was limited to the following:

1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual, and/or pointed at an individual. For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.

2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective officer to conclude that the individual may have experienced more than momentary discomfort.

An uninvolved supervisor, when feasible, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of all involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

Level 3

(a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.

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(b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.

(c) The officer used any of the following force options:

1. Chemical Agents/Munitions
2. Impact Weapon Strikes
3. Personal Body Weapons

(d) The officer used any of the following pursuit intervention tactics:

1. Vehicle Containment Tactic (VCT), if vehicle contact is made
2. Ramming
3. Pursuit Immobilization Technique (PIT)
4. Roadblocks, if vehicle contact is made

An uninvolved supervisor, when practical**,** will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into the Blue Team template.

The supervisor will also complete a Use of Force Investigation Report narrative in Blue Team for review through the Use of Force Review process. Suspect and witness statements from the crime report will be attached to the use of force investigation.

Level 4

Any incident involving deadly force or any force likely to cause death or serious bodily injury will be investigated under the protocols outlined in Policy P-12.

300.6.3 EMPLOYEE USE OF FORCE

When any Berkeley Police Department employee has engaged in a use of force as defined in this policy, the use of force must be reported to a Berkeley Police supervisor and investigated in accordance with this policy.

(a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence, such as a widespread disaster or civil disturbance, the officer shall prepare a supplemental report as soon as practical following the incident.

(b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

300.6.4 PUBLIC RECORDS

Records related to use of force incidents shall be retained and disclosed in compliance with California Penal Code section 832.7, California Government Code section 6254(f), and the Records Management and Release policy.

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300.7 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain, or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

See the Medical Aid and Response Policy for additional guidelines.

300.8 USE OF FORCE ADMINISTRATIVE REVIEW

The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report or Use of Restraint Device Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in Policy 301 instead of utilizing Division Captain Review.

The Chief of Police shall make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

Any determination concerning the propriety of force used shall be based on the facts and information available to the officer at the time the force was employed, and not upon information gained after the fact.

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All Use of Force Reports shall be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; 3) require further investigation; and/or, 4) require revision or additional training.

Use of Force Reports shall be held in file for at least five (5) years

300.9 WATCH COMMANDER RESPONSIBILITY

The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy.

300.10 TRAINING

Officers, investigators, and supervisors will receive annual training on this policy and demonstrate their knowledge and understanding (Government Code § 7286(b)).

300.10.1 TRAINING REQUIREMENTS

Required annual training shall include:

(a) Legal updates.

(b) De-escalation tactics, including alternatives to force.

(c) The duty to intercede.

(d) The duty to request and/or render medical aid.

(e) All other subjects covered in this policy (e.g., use of deadly force, chokehold and carotid hold prohibition, discharge of a firearm at or from a moving vehicle, verbal warnings).

(f) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

See the Training Policy for restrictions relating to officers who are the subject of a sustained use of force complaint.

300.10.2 STATE-SPECIFIC TRAINING REQUIREMENTS

Required state-specific training shall include guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities (Government Code § 7286(b)).

300.11 USE OF FORCE ANALYSIS

The Professional Standards Division Captain or his or her designee shall prepare a comprehensive analysis report on use of force incidents. The report shall not contain the names of officers, suspects or case numbers, and should include but not be limited to:

(a) An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age.

(b) All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2).

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(c) The identification of any trends in the use of force by members.

(d) Training needs recommendations.

(e) Equipment needs recommendations.

(f) Policy revisions recommendations.

300.11.1 REPORTING FREQUENCY

(a) On a quarterly basis via the City's Open Data Portal website;

(b) On a quarterly basis to the Police Accountability Board; and

(c) On a yearly basis as part of the Police Department's Annual Report to City Council

300.12 CIVILIAN COMPLAINTS

Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police Accountability Board (PAB). Complaints will be investigated in compliance with the respective applicable procedures of the IAB and the PAB.

300.13 POLICY REVIEW AND UPDATES

This policy shall be regularly reviewed and updated to reflect developing practices and procedures.

At least annually, the Berkeley Police Department and the PAB shall convene to review and update the Use of Force Policy to reflect developing practices and procedures per SB 230.

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Control Devices and Techniques

303.1 PURPOSE AND SCOPE

This policy provides guidelines for the use and maintenance of control devices that are described herein.

303.2 POLICY

In order to control subjects who are violent or who demonstrate the intent to be violent, the Berkeley Police Department authorizes officers to use control devices and techniques in accordance with the guidelines in this policy and the Use of Force Policy.

303.3 ISSUING, CARRYING AND USING CONTROL DEVICES

Control devices described in this policy may be carried and used by members of this department only if the device has been issued by the Department or approved by the Chief of Police, or his/her designee.

Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device.

Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices.

When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.

Except as otherwise provided in Section 303.9, kinetic energy projectiles and chemical agents shall not be used to disperse any assembly, protest, or demonstration (Penal Code 13652).

303.4 RESPONSIBILITIES

303.4.1 WATCH COMMANDER RESPONSIBILITIES

The Watch Commander may authorize the use of a control device by selected personnel or members of specialized units who have successfully completed the required training.

303.4.2 PERSONNEL AND TRAINING SERGEANT RESPONSIBILITIES

The Personnel and Training Sergeant, or designated instructor, shall control the inventory and issuance of all control devices and shall ensure that all damaged, inoperative, outdated or expended control devices or projectiles are properly disposed of, repaired or replaced.

Every control device will be periodically inspected by the Personnel and Training Sergeant or the designated instructor for a particular control device. The inspection shall be documented.

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303.4.3 USER RESPONSIBILITIES

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices.

Any damaged, inoperative, outdated or expended control devices or projectiles, along with documentation explaining the cause of the damage, shall be returned to the Personnel and Training Sergeant for disposition. Damage to City Property forms shall also be prepared and forwarded through the chain of command, when appropriate, explaining the cause of damage.

303.5 BATON AND COLLAPSIBLE BATON GUIDELINES

The need to immediately control a suspect must be weighed against the risk of causing serious injury. The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

When carrying a baton, including a collapsible baton, uniformed personnel shall carry the baton in its authorized holder on the equipment belt. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.

303.6 OLEORESIN CAPSICUM (OC) SPRAY GUIDELINES

As with other control devices, OC spray (aka pepper spray) and pepper projectiles may be considered for use to bring under control an individual or groups of individuals who are engaging in, or are about to engage in violent behavior. Pepper projectiles and OC spray should not, however, be used against individuals or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

303.6.1 OC SPRAY

Uniformed personnel carrying OC spray shall carry the device in its holster on the equipment belt or external vest carrier. Plainclothes and non-field personnel may carry OC spray as authorized, in accordance with the needs of their assignment or at the direction of their supervisor.

303.6.2 PEPPER PROJECTILE SYSTEMS

Pepper projectiles (aka "Pava" rounds) are plastic spheres that are filled with a derivative of OC powder. Because the compressed gas launcher (aka "less lethal" launcher) delivers the projectiles with enough force to burst the projectiles on impact and release the OC powder, the potential exists for the projectiles to inflict injury if they strike the head, neck, spine or groin. Therefore, personnel using a launcher should not intentionally target those areas, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

Officers encountering a situation that warrants the use of a launcher shall notify a supervisor as soon as practicable. A supervisor shall respond to all incidents where the suspect has been hit or

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exposed to the chemical agent. The supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.

303.6.3 TREATMENT FOR OC SPRAY EXPOSURE
Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

303.7 POST-APPLICATION NOTICE

Whenever OC has been introduced into a residence, building interior, vehicle or other enclosed area, officers should provide the owners or available occupants with notice of the possible presence of residue that could result in irritation or injury if the area is not properly cleaned. Such notice should include advisement that clean up will be at the owner's expense. Information regarding the method of notice and the individuals notified should be included in related reports.

303.8 LESS LETHAL PROJECTILE GUIDELINES

This department is committed to reducing the potential for violent confrontations. "Less lethal" projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

303.8.1 DEPLOYMENT AND USE
Only department-approved projectiles shall be carried and deployed. Approved projectiles may be used to compel an individual to cease his/her actions when such projectiles present a reasonable option.

Approved projectiles include:

(a) "Less Lethal" rounds: impact projectiles

(b) "Pava" rounds: impact projectiles containing OC/pepper spray

(c) "Marking" rounds: impact projectiles containing paint

Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

(a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles.

(b) The suspect has made credible threats to harm him/herself or others.

(c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.

(d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

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303.8.2 DEPLOYMENT CONSIDERATIONS

Before discharging projectiles, the officer should consider such factors as:

(a) Distance and angle to target.

(b) Type of projectiles employed.

(c) Type and thickness of subject's clothing.

(d) The subject's proximity to others.

(e) The location of the subject.

(f) Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

303.8.3 SAFETY PROCEDURES

Officers will inspect the launcher and projectiles at the beginning of each shift to ensure that the launcher is in proper working order and the projectiles are of the approved type and appear to be free from defects.

When it is not deployed, the launcher will be unloaded and properly and securely stored.

303.9 CROWD CONTROL REQUIREMENTS

Pursuant to California Penal Code 13652, kinetic energy projectiles and chemical agents shallonly be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectivelyreasonable to defend against a threat to life or serious bodily injury to any individual, includingany peace officer, or to bring an objectively dangerous and unlawful situation safely andeffectively under control, and only in accordance with all of the following requirements:

(a) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(b) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively

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reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(c) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(d) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(e) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(f) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(g) An objectively reasonable effort has been made to extract individuals in distress.

(h) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(i) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(j) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

1. A violation of an imposed curfew.
2. A verbal threat.
3. Noncompliance with a law enforcement directive.

As per City Council resolution (June 9, 2020), pepper spray for crowd control by employees ofthe Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as theCity Council removes the prohibition.

303.10 TRAINING FOR CONTROL DEVICES

The Personnel and Training Sergeant shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

(a) Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.

(b) All training and proficiency for control devices will be documented in the officer's training file.

(c) Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot

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demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

303.11 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to California Penal Code 13652.1 and the Berkeley Use of Force Policy.

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First Amendment Assemblies

428.1 PURPOSE

The purpose of this policy is to provide policy and procedural guidance to Berkeley Police Department personnel involved in the planning, response and/or deployment of police personnel for crowd situations.

428.2 MISSION STATEMENT

The mission of the Berkeley Police Department in crowd situations is to facilitate free expression, de-escalate violence and resolve conflict peacefully with the overall goal of ensuring public safety and protecting First Amendment rights of free speech and assembly.

(a) Appropriate action will be determined by the Incident Commander in the field, and will be based on the behavior of the people in the crowd.

(b) Police action shall be reasonable, intended to prevent lawlessness or restore order, and may include responses ranging from no police action to full crowd control tactics.

428.3 POLICY

In the event a crowd situation is determined to be a peaceful protest or demonstration, wherein participants are exercising their rights to free speech in a lawful manner, the policy of the Berkeley Police Department shall be to facilitate the event to the extent possible.

The Department shall make it a priority to establish lines of communication with the demonstrators both before and during the crowd situation. The Department shall consider social media as one means of communication.

In the event that a crowd situation is unlawful, and lack of immediate police action to may lead to the escalation of criminal behavior and violence, the Berkeley Police Department will take steps to restore order.

(a) Steps to restore order may include monitoring with minimal police presence, a strong police presence, selective arrest of those committing crimes or a dispersal order.

(b) Prior to issuing a dispersal order, BPD shall make efforts to safely arrest those committing crimes while preserving the rights of citizens to demonstrate.

(c) Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.

428.4 USE OF FORCE

Employees who employ force in a crowd control situation shall do so in conformance with policy set forth in the Use of Force Policy.

(a) Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), impact weapons and chemical agents should not be used on persons participating in a crowd

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situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.

1. Verbal commands to stand followed by control holds (e.g., wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.
2. If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.
3. Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.

(b) Officers attempting to move a crowd or individual should not strike anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.)

(c) Sworn officers should employ particular applications of force (e.g., a specific baton strike, such as a "rake" or "jab") as may be directed by their chain of command, when its use is intended to accomplish a desired crowd control objective.

1. Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine or groin except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person.
2. Officers on a skirmish line shall not use batons to collectively push a crowd in a particular direction prior to dispersal orders being given unless exigent circumstances exist. This requirement does not apply to officers on a skirmish line who are using force in compliance with Graham v. Conner.

(d) Officers are not precluded from using authorized force, as appropriate, to address the actions of a particular person(s).

(e) Less-lethal munitions shall only be fired at a specific target and officers shall be mindful of the increased risk of hitting an unintended target due to unexpected movement of members of the crowd. Officers may never use less-lethal munitions indiscriminately against a crowd or group of people.

Personnel deployments during demonstrations should include clear and specific objectives.

In squad or team movement, the type and scope of force used shall be at the discretion of the Incident Commander, Field Commander, Squad or Team Leader.

De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed prior to the use of any force, consistent with the Department's Use of Force policy.

Kinetic energy projectiles and chemical agents for crowd control purposes shall only be deployed by officers who have received POST training for crowd control if the use is objectively reasonable

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to defend against a threat to life or serious bodily injury to any individual, including an officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control (Penal Code 13652).

Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

- A violation of an imposed curfew.
- A verbal threat.
- Noncompliance with a law enforcement directive.

For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agent, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed.

428.5 USE OF VEHICLES

BPD shall enhance mobility and flexibility by using police vehicles such as trained bicycle officers and motorcycle officers, in addition to foot patrols, to maintain peaceful crowd management. Parking Enforcement Officers will only be used for traffic control purposes.

Specialized police vehicles (e.g., police motorcycles, off-road motorcycles, parking enforcement vehicles, mobile command vehicles, etc.) may be used in crowd situations at the discretion of the Incident Commander.

(a) Specialized police vehicles shall not be used to contact demonstrators for the purpose of physically pushing people back or forcibly dispersing them from an area.

(b) Specialized police vehicles may be in a MFF line with other marked vehicles as a visual deterrent.

428.6 DEFINITIONS

Control Hold: Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.).

Counter Demonstration: An assembly of persons in conflict with a different demonstration at the same location.

Crowd Control: Law enforcement response to a pre-planned event or spontaneous event, activity or occurrence that has become unlawful or violent and may require arrests and/or the dispersal of the crowd. These strategies include but are not limited to skirmish lines, mobile field force techniques, targeted and mass arrests and the use of force generally.

Crowd Management: Strategies and tactics employed before, during and after a gathering for the purpose of maintaining the event's lawful activities. These strategies include, but are not limited to:

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communication with leaders before and during the event, police presence and event participation, blocking traffic to facilitate a march, and bicycle officers monitoring the crowd.

Demonstration: A public assembly of persons to exhibit thoughts, ideas or opinions.

Incident Commander: A sworn officer, usually a lieutenant or captain, responsible for all personnel assigned to an event.

During the initial stages of a spontaneous event, the Incident Commander will be the highest ranking or senior officer available to take charge, until relieved of responsibilities by a higher ranking officer.

Mobile Field Force (MFF): A statewide tactical concept that utilizes groups of trained officers with standard marked police vehicles and equipment, who have the capability to respond to crowd events that are highly mobile or that break up and quickly reform in other locations.

Non-Permitted Event: Any demonstration, whether spontaneous or planned, wherein organizers have not obtained permits or licenses that are lawfully required under the circumstances.

Operations Commander: A sworn officer, usually a lieutenant or sergeant, responsible for the movement and actions of a platoon, squad, or other identified group of officers at the scene of an event.

Pain Compliance Technique: Any technique designed to inflict pain for the purpose of motivating a person to comply with verbal commands (e.g., buckle nerve, gum nerve, sternum rub).

Passive Resistance: When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way (i.e., a person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.)

Persons who lock arms, use lockdown devices, or physically resist officers in any other way are not considered “passive”.

Permitted Event: Any demonstration or event wherein organizers have obtained all applicable permits or licenses.

Platoon: Any group of officers, usually 36 or more in number, organized into 3 or more squads. Each platoon will have a commander, usually a lieutenant, who is responsible for the actions of the platoon in the field.

Protected First Amendment Activity: Various forms of expression including, but not limited to, speech, assembly, marching, holding signs, street theater, distribution of literature, or displaying banners.

(a) Freedom of speech and assembly are rights protected by the First Amendment of the United States Constitution, and Article 1 Sections 2 & 3 of the California Constitution subject to reasonable time, place and manner regulations, such as, compliance with lawful permit requirements and traffic regulations.

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Riot: Any group of two or more people, acting together, who use force, violence, or the threat of force or violence, to disturb the public peace (Penal Code § 405).

Riot Gear: Police equipment visible to the public and generally associated with crowd control, such as, helmets, batons, flex-cuffs, special uniforms, specialized vehicles, etc.

Spontaneous Event: Any unplanned event that develops, usually as a result of some catalyst, such as sporting events, parties, concerts, court rulings, festivals, major political events, major news events, or any combination thereof.

Squad: A group of sworn officers, usually 12 in number, with an identified squad leader responsible for the actions of the squad.

Squad Leader: A sworn officer, usually a sergeant, responsible for the movement and actions of a squad.

Team: A group of four sworn officers within a squad, inclusive of an identified leader responsible for the actions of the team.

Team Leader: A sworn officer, sometimes a sergeant, responsible for the movement and actions of a team of officers within a squad.

Time, Place or Manner Restrictions: Reasonable restrictions on protected activity imposed by law (e.g., an applicable permit) intended to serve a specific governmental interest (e.g., public safety), with regard to the time, location, or manner in which protected activity is to be conducted.

Unlawful assembly: Two or more persons, assembled together to commit an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner (Penal Code § 407).

The prohibition in Penal Code § 407 against persons in an assembly doing a lawful act in a violent, boisterous or tumultuous manner is limited only to situations where the conduct poses a clear and present danger of imminent violence ((1973) 9 Cal. 3d 612, 623).

428.7 PLANNED EVENTS

(a) At such time as a special event or crowd situation comes to the attention of police department personnel, the Operations Division Captain or Watch Commander shall be notified, and forwarded all information regarding the event.

(b) The Incident Command System (ICS) shall be used for managing all crowd situations. ICS should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.

(c) The Incident Commander shall, whenever possible, establish a liaison with the group or groups involved, and other potential stakeholders.

1. Stakeholders may include event organizers, business owners or their employees, or private residents that may be affected by an event.

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i. Stakeholder involvement is critical to the overall success of managing any crowd event, but may be especially helpful during planned demonstrations where civil disobedience is expected.

ii. If a leader or cooperative event organizer is not identified, the Incident Commander shall ensure that attempts to communicate with the group and establish a liaison will continue to the extent reasonable.

(d) Once assigned to a preplanned event, the Incident Commander shall make an initial assessment of the personnel needed to appropriately manage the event based on the information available at the time.

1. Initial assessment may include on-duty personnel in the Operations Division and other divisions within the Department.

2. If available on-duty personnel will not be sufficient to manage an event, consideration should be given to calling in off duty personnel and requesting mutual aid resources from surrounding police agencies.

(e) Once sufficient details of the event are known to accurately estimate the scope of response, and required personnel are identified, the Incident Commander shall work with Division Captains to secure their participation.

(f) Once all personnel required to work the event are identified and committed to an event, the Incident Commander shall ensure a written Operations Plan is completed, time and circumstances permitting.

1. An Operations Plan shall contain sufficient detail to allow an uninvolved party who reads it to understand the nature of the event, department policy involved, planned response and the department resources dedicated to it.

2. The Operations Plan shall include specific guidelines and priorities to consider when making deployment decisions and shall reflect the department's commitment to crowd management.

3. Upon approval by the Operations Captain and signed by the Chief of Police, the original Operations Plan shall be **scanned into the Professional Standards folder (within the Department's internal GDrive)** and copies distributed to all appropriate personnel.

428.8 SPONTANEOUS EVENTS

(a) Sworn officers shall respond to a reported spontaneous crowd situation to assess immediate hazards to public safety.

(b) The ranking sworn officer, or senior officer, shall assume the role and responsibilities of Incident Commander, and take the following immediate actions:

1. Broadcast the type of event, if known, and estimated number of participants.

2. Report known or imminent public safety hazards.

3. Request sufficient on-duty personnel resources to address life-threatening public safety emergencies.

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(c) The on-duty Watch Commander, or if absent or unavailable, the senior Patrol Sergeant, shall respond to the event scene and take the following actions:

1. Assume the role and responsibilities of Incident Commander.
2. Assess the potential risks to public safety.
3. Assess whether or not a static event has the potential to go mobile, either on foot in the form of a march, or in vehicles.
4. Assess the number of officers and type of equipment required to maintain order and their manner of response.
5. Assess the potential need for outside resources:
    i. On-duty personnel from other police agencies.
    ii. Fire Department personnel and resources.
    iii. Media relations personnel.
6. Identify and broadcast the location of the Incident Command Post, operational staging areas, and routes to and from.

(d) The Incident Commander should consider the following factors when making decisions regarding the police response:

1. The overall level of risk to both participants and the general public who may be inadvertently caught up in the event.
2. The level of disruption to those not involved in, but impacted by the event.
3. The level of vehicular traffic.
4. The number of people involved in the event and their behavior.
5. The personnel and equipment available for the task.

(e) The Incident Commander may use on-duty personnel from other divisions or units to assist in the police response to a spontaneous event.

(f) The Incident Commander shall direct necessary on-duty personnel to a static event and make response assignments as required, which may include, but are not limited to:

1. Assign personnel to monitor the event only.
2. Use personnel to maintain order at the event and/or divert uninvolved, affected traffic away from the area.

(g) If the event is mobile, the Incident Commander should consider response actions appropriate to manage or control the behavior and activities of the crowd, options including, but not limited to:

1. Let the group proceed with no police presence.
2. Assign officers to facilitate the mobile event by providing traffic control.
3. Attempt to direct the path of the mobile event by denying access to certain roadways.

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4. Allow the mobile event to proceed, but deny access to certain locations that would create a public safety hazard, such as, roadways to bridge approaches and roadways in busy commercial districts.

5. Declare the event an unlawful assembly if circumstances qualify, and allow the group to disperse, make arrests, or use force to disperse the group for the purpose of restoring public order.

(h) There is no required order of response; the Incident Commander shall be responsible for continually assessing the event and adjusting the response strategies and tactics accordingly. Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.

(i) The Incident Commander shall remain responsible for the police response to a planned or spontaneous crowd event until relieved by a higher ranking officer, or the position is relinquished to another officer who officially assumes the responsibility.

1. Any change of command shall be broadcast on the radio frequency used to manage the police response.

428.9 GENERAL EVENT PROCEDURES

(a) Employees dispatched or pre-assigned to a crowd situation shall be in a department-approved uniform appropriate for their assignment.

1. Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.

(b) Officers dispatched or pre-assigned to a crowd situation shall have immediately available relevant department-issued safety equipment, (i.e., helmet, chemical agent mask, etc.).

(c) Specialized weapons and equipment (i.e., patrol rifles, less-than-lethal munition launchers, chemical agent masks, etc.) shall be deployed at the discretion of the Incident Commander. The Incident Commander shall be responsible for assuring that there is an inventory of less-lethal munitions, CS gas, and/or smoke prior to deployment, including any outside agencies assisting BPD. Absent exigent circumstances, such less-lethal munitions, CS gas and smoke shall not be deployed prior to determination of an accurate inventory.

(d) The Incident Commander shall ensure personnel receive an operational briefing, whether in person or via radio, prior to their deployment.

1. Information communicated in an operational briefing shall include, at minimum:

(a) The nature of the event.

(b) The mission and operational goal(s) of the department.

(c) The chain of command managing the event.

(d) The individual's assignment and any special equipment he/she may require to accomplish it.

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(e) When possible, the identity and appearance of all undercover personnel involved in the police response.

- Undercover personnel should be present at operational briefings for planned events.

(e) Undercover personnel shall adhere to laws and policies governing information gathering by law enforcement.

(f) Verbal requests or commands should be used before and when advancing on a crowd.

1. Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: "Step back!" or "Move onto the sidewalk!")

(g) Employees in a crowd situation shall conduct themselves in a professional and courteous manner, answering questions when appropriate.

(h) When practical, as part of an implemented crowd control plan, police personnel should attempt to identify and separate from the crowd individuals who are violating the law.

1. Efforts to take an offender into custody in a crowd situation should strive to minimize the risk to uninvolved persons, to the extent reasonably possible.

(i) Visual recording devices should be used to document the activities of police personnel and the people involved in a crowd situation.

1. Activities that should be documented via visual recording device include, but are not limited to:

i. Criminal activity (misdemeanor or felony);

ii. Violation of a Permit condition, City Ordinance, or traffic violation.

iii. Use of force by officers.

iv. Arrests by officers.

v. Any person who, by words or action, is inciting violence.

vi. Dispersal orders issued by police.

(j) Employees shall adhere to information release and media liaison protocols set forth in the Records Maintenance and Release policy and the Media Relations policy, respectively.

1. The Incident Commander shall ensure legitimate "credentialed" members of the media are provided access to areas available to them by law.

2. A person who claims to be a member of the media, but who does not possess a bona fide media credential, has no special privilege and shall be treated like any other citizen with regard to event area access.

(k) In any first amendment assembly, if feasible the Field Commander should ensure that medical resources are available. An objectively reasonable effort should be made to extract individuals that appear to be in distress. Medical assistance should be promptly

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provided, if properly trained personnel are present, or requested, for injured persons, when it is reasonably safe to do so.

428.10 DISPERSAL ORDERS

(a) The Incident Commander at any crowd situation shall make the determination as to when or if a crowd, whose behavior poses a clear and present danger of imminent violence, will be declared an unlawful assembly.

(b) Unless otherwise directed or required, the following dispersal order text shall be used by Berkeley Police Department personnel in crowd control situations:

1. "I am () () with the Berkeley Police Department. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at () to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal projectiles, baton strikes, or use of tear gas, which may pose a risk of serious injury. The following routes of dispersal are available: () You have () to leave the area."

(c) Except when exigent circumstances exist and doing so would place officers or the public at risk, a dispersal order shall be issued prior to forcibly dispersing a crowd.

(d) The Incident Commander, or his/her designee, shall issue a dispersal order:

1. As close to the crowd as practical;
2. In a manner clearly audible to persons in the crowd;
    i. Use sound amplification systems when necessary;
    ii. When practical, shall record the dispersal order to establish that the orders were audible to the crowd.
    iii. When practical, employ officers stationed around the perimeter of the crowd to ensure the dispersal order is clearly audible.
3. In more than one language if possible, depending on the needs of the crowd.

(e) Additional dispersal orders may be given following a reasonable period of time to allow for crowd dispersal. Ongoing dispersal orders should be avoided.

(f) If after a dispersal order is given, a crowd is discovered in a different location, the new location should be evaluated to determine if it is an ongoing unlawful assembly.

428.11 MASS ARRESTS

(a) When considering the arrest of multiple people at a crowd control event, the Incident Commander should evaluate preparedness of the following operational elements:

1. Resource Availability: Sufficient personnel should be available to maintain order, accomplish intended arrests and subsequent processing, and maintain control of the arrestees through a booking process, if necessary.

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2. In-Field Arrest Processing: Equipment and logistics should be available to facilitate in-field processing of mass arrests.
3. Transportation: In the event arrestees are not released in-field on citation, vehicles should be available to facilitate necessary transportation to a custodial facility.
4. Booking/Jail Capacity: The custodial facility to which arrestees are transported should have the capacity to receive and maintain custody of persons not released on citation.
5. Documentation: Arresting personnel must ensure arrestees are identified and photographed, arrests are effectively documented, and associated paperwork is properly directed for administrative processing.

428.12 MUTUAL AID

(a) An official request for mutual aid resources shall adhere to procedures set forth the Mutual Aid Policy.

1. Emergency requests for immediate assistance may be made directly to local agencies.

(b) The Chief of Police or his/her designee shall contact the liaison from the Alameda County Sheriff's Department to coordinate a plan for mutual aid resources and response.

1. This plan should include the number of officers potentially needed, any special equipment requested, and an expected response time if called out.
2. Absent exigent circumstances, responding mutual aid personnel shall be briefed prior to deployment and should be given clear and specific objectives.

(c) In preparation for mutual aid forces, the Incident Commander shall ensure that liaison officers from BPD are assigned to work with the outside agency to assist with response routes into the staging area, parking vehicles, checking in with the staging area supervisor, communications and response to event location.

(d) MFF organization should be employed when integrating mutual aid personnel into local crowd event response, or when responding to another jurisdiction as a mutual aid unit.

1. Personnel should be formed into squads or teams that are easily integrated into squads and platoons.

(e) When responding to another jurisdiction as a mutual aid unit, personnel will have with them enough vehicles and equipment to allow the deployed team or squad to patrol a designated area, use less-than-lethal munitions or authorized chemical agents, if necessary, and have enough food and water to last for a reasonable operational period until relieved.

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428.13 MEDIA ACCESS

If officers close the immediate area surrounding any emergency field command post or any other command post, or establish a police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged in a protected activity pursuant to the First Amendment, officers shall comply with the requirements of Penal Code § 409.7 relating to media access (i.e., access to recently closed areas) (Penal Code § 409.7).

428.14 POST-EVENT

Once a normal work schedule has resumed, the Incident Commander shall ensure that an After Action Report is prepared within 72 hours after the resumption of the Incident Commander's normal work schedule. Should an extension be necessary in order to properly and fully complete the report, such a request may be made to the Chief of Police.

(a) An After Action Report shall document arrests, injuries, property damage, personnel costs, inventories of less lethal munitions, CS gas and smoke, and an overall critique of the police preparation and response.

(b) An After Action Report should include information in sufficient detail to help others prepare for the event if it, or a similar event, should occur in the future.

(c) The Operations Division Captain or the authorized designee should ensure that a summary ofo each deployment of kinetic energy projectiles or chemical agents for crowd control purposes is prepared and published on the department website within 60 days of ach incident. The time frame may be extended for another 30 days where just cause is demonstrated, but no longer than 90 days from the time of the incident. The summary shall be limited to the information known to the Department at the time of the report and include the information required in Penal Code 13652.1.

428.15 TRAINING

When possible, training in crowd management and crowd control shall be incorporated into general departmental in-service training.

When possible prior to a major pre-planned event, updated training should be provided to all assigned officers.

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Military Equipment

709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The Berkeley City Council.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

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709.2 POLICY

It is the policy of the Berkeley Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment. Consistent with Section 7071(a)(1)(E), uses of military equipment for purposes, in a manner, or by a person not authorized in this policy are prohibited. For the purposes of this provision, "uses" does not include activities such as those associated with maintenance, transportation, or training.

709.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

(a) Acting as liaison to the governing body for matters related to the requirements of this policy.

(b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.

(c) Conducting an inventory of all military equipment at least annually.

(d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Berkeley Police Department (Government Code § 7071).

(e) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).

709.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM Single Launcher
- Milkor LTL Multi-Launcher
- FN 303 Launcher & FN Pava Impact Projectile
- Oleoresin Capsicum Spray
- Chlorobenzylidene Malononitrile and Oleoresin capsicum
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/Sound Diversionary Device
- Long Range Acoustic Device
- Mobile Command Vehicle

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- Barret Model 99

709.4.1 BERKELEY POLICE DEPARTMENT'S INVENTORY

Rifles and Associated Ammunitions

Rifle:

M4 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Colt M-4 patterned rifle, which fires the.223 Remington cartridge

Quantity: The Berkeley Department currently owns and maintains 96 rifles

Capabilities: The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

Lifespan: Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Manufacturer's Description: This specially designed law enforcement weapon system features many of the combat proven advantages of the military Colt M4. With the 4-position buttstock fully retracted, the Colt Law Enforcement Carbine is less than 32inch length and weighs only 6.9 lb - ideal for tactical deployment and traditional patrol.

PURPOSE and AUTHORIZED USE:

Purpose: The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. An officer considering the use of this firearm in a non-preplanned incident should consider the factors set forth in the Risk Assessment section of Policy 607, Operations, Planning, and Deconfliction.

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FISCAL IMPACT:

Initial Cost: Exact costs unknown. Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between $1,000 and $1,200 a piece, current rifles cost between $1,400 and $1,600. It should be expected that these prices will fluctuate and likely increase over time.

Annual cost: Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

Training costs: Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between $25 to $500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.) Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

Maintenance costs: Vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between $3 and $30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between $150 and $300 per rifle.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Remington 700 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Remington 700 rifle, which fires the.308 caliber ammunition.

Quantity: The Berkeley Department currently owns and maintains 6 rifles

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Capabilities: The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

Lifespan: The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

Manufacturer's Description: The Model 700 SPS Tactical is a highly maneuverable member of the family. It's built for tack-driving accuracy with a 20" heavy-contour tactical-style barrel and dual-point pillar bedding in its black synthetic stock. Hogue® overmoldings on the stock facilitate sure handling, and it has a semi-beavertail fore-end for added stability off a rest.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. An officer considering the use of this firearm in a non-preplanned incident should consider the factors set forth in the Risk Assessment section of Policy 607, Operations, Planning, and Deconfliction.

FISCAL IMPACT:

Initial Cost: The initial cost to purchase this rifle with its associated components is approximately $10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

Annual cost: If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately $20-dollars or $1 dollar per round.

Maintenance costs: Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

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There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force, Policy 354-Precision Rifle. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Barret Model 99 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle

Quantity: The Berkeley Department currently owns and maintains 1 rifle.

Capabilities: This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

Lifespan: This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

Manufacturer's Description: The Model 99 brings new levels of long-range precision shooting. Known as much for its dependability as its versatility, the Model 99 has unfailing accuracy you can rely on.

PURPOSE and AUTHORIZED USE:

Purpose: The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. An officer considering the use of this firearm in a non-

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preplanned incident should consider the factors set forth in the Risk Assessment section of Policy 607, Operations, Planning, and Deconfliction.

FISCAL IMPACT:

Initial Cost: The Barrett Model 99 50-caliber rifle has a retail cost of approximately $12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

Annual cost: The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately $6 dollars per bullet; $60 for a box of 10 and $600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

RIFLE AMMUNITION:

.223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. (Use in the Colt M4 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type:.223 Remington ammunition: 55 grain FMJ (full metal jacket)

.223 Remington ammunition 62 grain soft point for duty purposes

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Quantity: Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000 round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

Capabilities: The.223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Product Description:

.223 Remington ammunition: 55 grain FMJ (full metal jacket)

The full metal jacket ammunition features a 55 grain weight and includes 200 rounds. The caliber is.223 Rem, and the ammunition is made in the USA.

.223 Remington ammunition 62 grain soft point

Federal TRU 223 ammo is custom made ammunition for the Urban Law Enforcement Officer in mind. It features a lead core Hi Shock Soft Point bullet which offers great stopping power and excellent penetration, a non corrosive primer and brand new never fired brass casing and nickel plated brass primer. This LE Tactical ammo can be reloaded up to 5 times for those shooters that reload their 223 ammo. Federal LE 223 Remington has a muzzle velocity of 3050 feet per second and a muzzle energy of 1281 ft lbs. This 223 Federal ammo is new production packaged in 20 round boxes and 200 rounds per case. Federal TRU ammunition is engineered using Mil-Quality specifications. Each Federal TRU cartridge is made using select mil-quality low flash powders that do not disrupt an officer's night vision. The TRU case and web are built using thicker brass, adding the extra strength needed for the high powered rifle. TRU primers are crimped for added holding ability. This virtually eliminates backed out primers that can lock-up your weapon. With TRU ammunition, potentially disastrous situations are greatly reduced. TRU bullets are specifically engineered ranging from fragmenting designs for tactical entry to deeper penetrating bullets for patrol.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of incapacitating an individual from a distance and providing greater accuracy at a distance. This ammunition is used in the M4 rifle.

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Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for.223 Remington range from $0.50 to $0.75 a round for training ammunition (55 grain) and $1.25 to $1.50 a round for duty ammunition (62 grain).

Annual cost: The annual cost of the equipment is minimal, and is dependent on the amount of training.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Hornady.308-caliber ammunition (for the Remington 700 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Hornady.308-caliber ammunition

Quantity: The Berkeley Department currently possess approximately 1800 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of incapacitating an individual or disabling an object in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation. This ammunition is specifically designed for accuracy at distances of 500 yards.

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Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Manufacturer's Description: Millions of successful hunts have proven the accuracy and deadly effect of the famous Hornady® InterLock,® SST,® InterBond® and CX™ bullets we load into Hornady® Custom™ rifle ammunition.

Every round of Hornady® Custom™ ammunition is hand inspected before packaging to ensure the highest levels of quality control. At Hornady,® we manufacture Custom™ ammunition to give shooters and hunters the advantage of handloaded accuracy in a factory load.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of incapacitating an individual from a distance of 500 yards and providing greater accuracy at a distance. This ammunition is used in the Remington 700 rifle.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately $1 dollars per bullet; $20 for a box of 20, plus shipping and handling. We currently possess 1800 rounds of BMG ammunition, $1800.

Annual cost: The annual cost of the equipment is minimal, and is dependent on the amount of training.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

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Summit Ammunition.50-caliber BNG rounds of ammunition (for the Barrett Model 99)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Summit Ammunition.50-caliber BNG rounds of ammunition

Quantity: The Berkeley Department currently possess approximately 100 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Manufacturer's Description: This is 50 Cal. BMG Summit Ammunition 700gr. M-2 Armor Piercing Ammo. Summit Ammunition has been manufacturing 50 Cal. BMG for over 10 years and they manufacture a premium quality product. They are a fully licensed and insured manufacturer. This ammo is loaded with NEW Winchester brass, New USGI powder and Pulled Lake City M-2 AP bullets.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately $6 per bullet; $60 for a box of 10, and $600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

Annual cost: The annual cost of the equipment is minimal.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

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Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

ROBOTS:

ReconRobotics Recon Scout XT (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: ReconRobotics Recon Scout XT

Quantity: The Berkeley Police Department currently owns and maintains 2.

Capabilities: The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

Lifespan: Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

Manufacturer's Description: The Recon Scout XT is just eight inches long and weighs just 1.3 lbs., making it extremely easy to carry and throw. Moreover, deploying the Recon Scout XT takes just 5 seconds, and using it requires no special training. Simply pull the activation pin and throw the device through a doorway or over a wall, or drop it down a vertical shaft using a tether. Using a single joystick on the operator control unit (OCU), a tactical team leader or warfighter can then direct the device to move through the environment and send back real-time video. Equipped with an infrared optical system that automatically turns on when the ambient light is low, the Recon Scout XT can transmit video up to 100 feet indoors and 300 feet outdoors, day or night. The Recon Scout XT may also be specified in any of three transmitting frequencies, allowing police and military personnel to operate up to three robots in the same environment at the same time.

PURPOSE and AUTHORIZED USE:

Purpose: The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent

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encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

Authorized Uses: The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

FISCAL IMPACT:

Initial Cost: The initial cost for the Recon Scout XT robot was about $12,500 per unit (2010 cost).

Annual cost: There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

Training costs: The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

Maintenance costs: There are no annual or storage costs.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 708 Robot Cameras.

TRAINING:

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel who have familiarized themselves with the product manual, operations, procedures, and demonstrated competency in the product through hands on training, these trainings are often referred to as a train-the trainer training. The cost of training is staff time.

Andros Remotec HD-1 Hazardous Duty Robot (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Andros Remotec HD-1 Hazardous Duty Robot

Quantity: The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

Capabilities: Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it

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is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

(a) A spike to break glass and access vehicles or homes with potential explosive devices inside

(b) An X-ray mount in order to remotely X-ray suspected explosive devices.

(c) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance

(d) A hook with cutting blades that are used to cut backpack straps, ropes, etc.

(e) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.

(f) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

Lifespan: The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

Manufacturer's Description: The Remotec ANDROS fleet of hazardous duty unmanned vehicles is the preferred choice of first responders worldwide. The robust, mission-proven design of the ANDROS line keeps danger at a distance with:

- Simultaneous tool mounts for rapid response during dynamic missions (i.e. suits changing needs as the mission unfolds)
- A versatile array of two-way audio, video, advanced sensors, tools and controllers
- Easy maintainability for minimal downtime

Made in the USA and backed by world-class training and post-sale support, it's no wonder there are over 1,000 ANDROS robots deployed around the globe.

PURPOSE and AUTHORIZED USE:

Purpose: The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

Authorized Uses: Used to examine and possible destroy hazardous materials such as an explosive device.

FISCAL IMPACT:

Initial Cost: Procured in 2008 for $214,496 including on-site training through a UASI Grant. (64,292-N.S.)

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Annual cost: There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

Training costs: Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

Maintenance costs: Remotec offers occasional maintenance and upkeep workshops free of charge.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 708 Robot Cameras.

TRAINING:

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. All Berkeley Police Bomb Technicians are required to attend a federally mandated training that lasts approximately six weeks.

Less Lethal Launchers:

Penn Arms 40mm Single Launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Penn Arms 40mm Single Launcher

Quantity: The Berkeley Department currently owns and maintains 20.

Capabilities: The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: A 40mm compact single-shot break-open frame launcher with a rifled barrel and folding stock. Features include: Double-action trigger, trigger lock push button and hammer lock safeties.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles

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allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: Use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost $815.00 each.

Annual cost: Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost $3 to $30.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

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Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

Milkor LTL Multi-launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Milkor LTL Multi-launcher

Quantity: The Berkeley Police Department currently owns and maintains 2.

Capabilities: The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

Manufacturer's Description: Developed with our partner company, Abrams Airborne Manufacturing, The 40mm Multi-Shot Less-Lethal Tactical Launcher (LTL) was manufactured with the needs of the modern tactical team at the forefront. The launcher is capable of firing a wide variety of 40mm LTL ammo.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before

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such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: Use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost $3950.00 each.

Annual cost: Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

FN 303 and FN Pava Impact Projectile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: FN 303 and FN Pava Impact Projectile

Quantity: The Berkeley Department currently owns and maintains 8 FN 303 less lethal launchers.

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Capabilities: The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: The FN 303® Less Lethal Launcher is constructed from durable lightweight polymer with comfortable ergonomics and an easy to operate safety. The FN 303® Launcher is equipped with both flip-up iron sights and an integrated MIL-STD-1913 top mounting rail for optical or electronic sights or other accessories. The lightweight polymer magazine holds 15 projectiles and offers a clear rear cover to allow the operator to instantly verify both the payload type and the number of projectiles remaining.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: Use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

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FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost $800.00 each.

Annual cost: Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost $30 per kit.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

Light/sound Diversionary Devices:

CTS 7290 Diversionary Device (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: CTS 7290 Diversionary Device

Quantity: The Berkeley Department currently owns and maintains 50.

Capabilities: When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

Lifespan: The lifespan of the CTS 7290 Diversionary Device is 5 years.

Manufacturer's Description: The CTS 7290 is the standard for diversionary flash-bang devices. The 7290 produces a 165-180 db and 6-8 million candela of light output. The patented design of

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the 7290, incorporates a porting system that eliminates movement of the body at detonation even if the top or bottom of the device should be in contact with a hard surface. In addition, internal adjustments have greatly reduced smoke output.

Flash Bangs are used by special tactical units during hostage rescue and high-risk warrants. It is an ATF-controlled Class-C explosive device that emits a bright light and thunderous noise to distract potentially dangerous individuals.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

Authorized Uses: The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

FISCAL IMPACT:

Initial Cost: Diversionary Devices cost approximately $45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

Annual cost: See below training cost.

Training costs: Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

Maintenance costs: The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 353 Diversionary Devices.

TRAINING:

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices.

Long Range Acoustic Device

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The Long-Range Acoustic Device (LRAD)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: The Long Range Acoustic Device (LRAD)

Quantity: The Berkeley Department currently owns and maintains possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

Capabilities: Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

Lifespan: The lifespan for both LRADs is 25 years.

Manufacturer's Description: LRAD 100x In addition to being 20 – 30 decibels louder than bullhorns and vehicle-based P.A. systems, the LRAD 100X is also up to 6X louder and much more intelligible than other hailing devices of comparable size and weight. Live or recorded broadcasts from the portable LRAD 100X easily overcome engines, sirens and noisy crowds to ensure every message is heard and understood. The LRAD warning tone safely alerts attention to the voice messages that follow, establishes large standoff zones, and is the safer crowd control alternative to non-lethal and kinetic measures.

LRAD 450XL- The LRAD 450XL utilizes technology developed and patented* by Genasys Inc. to provide the audio output of larger acoustic hailers almost twice its size and weight, while delivering the same outstanding vocal clarity inherent in all LRAD systems. The LRAD 450XL broadcasts powerful warning tones to command attention to the highly intelligible voice messages that follow, enabling operators to change behavior and enhance response capabilities with safe, scalable escalation of force. Lightweight and designed for use on tripods or mounted on vessels, vehicles, and Remote Weapon Stations (RWS), the LRAD 450XL is a highly effective, long range communication system in use around the world for public safety, law enforcement, maritime and defense applications.

PURPOSE and AUTHORIZED USE:

Purpose: The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events

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- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

Authorized Uses: The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

FISCAL IMPACT:

Initial Cost: The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was $49,999.

Annual cost: BPD has not incurred any additional cost to date for this equipment.

Training costs: Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

Maintenance costs: There are no maintenance or storage costs for this equipment.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 707 Long Range Acoustic Device.

TRAINING:

Training is conducted by members of the Berkeley Police Department who have extensively reviewed the product manual, become knowledgeable and familiar in the operations and procedures of the LRAD. All trainers have proven demonstrated proficiency and competency in the product through hands on training, these trainings are often referred to as a train-the trainer training.

Mobile Command Vehicle

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Mobile Command Vehicle (MCV)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: MCV is a 2003 Freightliner MT55

Quantity: The Berkeley Department currently owns and maintains 1 MCV, a 2003 Freightliner MT 55.

Capabilities: The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

Lifespan: This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

Manufacturer's Description: The 22' Freightliner MT55 P1200 is the biggest stepvan option for your delivery fleet, offering maximum capacity, accessibility and maneuverability. Built with a powerful Cummins 6.7L 200HP Diesel Motor, this route truck has folding lower shelves to optimize your cargo space and rear sonar for safety.

PURPOSE and AUTHORIZED USE:

Purpose: This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4th of July, critical incidents or natural disasters.

Authorized Uses: This vehicle is used as a mobile command post for large scaled events.

FISCAL IMPACT:

Initial Cost: The initial cost of the MCV (2003 Freightliner MT55) was $230,800.

Annual cost: There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

Training costs: Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

Maintenance costs: There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 811 Mobile Command Vehicle.

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TRAINING: Training is conducted by members of the Berkeley Police Department who have extensively reviewed the product manual, become knowledgeable and familiar in the operations of the 2003 Freightliner MT 55. All trainers have proven demonstrated proficiency and competency in the product through hands on training, these trainings are often referred to as a train-the trainer training. All operators have had behind the wheel practical training, wherein the operator drives various routes through the City of Berkeley with a trainer during training.

Chlorobenzylidene Malononitrile and Oleoresin Capsicum

Chlorobenzylidene Malononitrile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Chlorobenzylidene malononitrile (CS)

Quantity: The Berkeley Department currently owns and maintains Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Capabilities: CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

Lifespan: CS and OC canisters expire in approximately 5 years.

Manufacturer's Description: Unable to locate from the manufacturer, provided by the subject matter experts. Chlorobenzylidene malononitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily

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temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Use must comply with local, state, federal laws, and BPD Special Order 2020-0007 (Policy 1107).

FISCAL IMPACT:

Initial Cost: The cost for CS canisters ranges from $20.00 to $39.00 per unit.

Annual cost: See below cost of training.

Training costs: When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

Oleoresin Capsicum (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Oleoresin capsicum (OC)

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Inventory for OC canisters:

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Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

Capabilities: A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

Lifespan: CS and OC canisters expire in approximately 5 years.

Manufacturer's Description: Unable to locate from the manufacturer, provided by BPD subject matter experts. Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Use must comply with local, state, federal laws, and BPD Special Order 2020-0007 (Policy 1107).

FISCAL IMPACT:

Initial Cost: The cost for OC canisters ranges from $36.00 to $44.00 per unit.

Annual cost: See below cost of training.

Training costs: When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

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Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

Oleoresin Capsicum Spray (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Oleoresin capsicum (OC) spray

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Qty 23- First Defense MK-9 OC spray (13 ounces)

Capabilities: The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

Lifespan: Aerosol products eventually lose pressure over time. The lifespan the MK-9 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

Manufacturer's Description: The MK9 features an easy to use trigger handle, is intended for use in crowd management and will deliver 14 short bursts of OC at an effective range of 18-20 ft. This 1.3/% MC OC aerosol product utilizes a stream delivery method providing a target-specific, strong concentrated stream for greater standoff.

PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

FISCAL IMPACT:

Initial Cost: The MK-9 OC spray costs approx. $60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply

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or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

Annual cost: See below cost of training.

Training costs: Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

LEGAL AND PROCEDURAL RULES:

Use must comply with local, state, federal laws, and BPD Special Order 2020-0007 (Policy 1107).

TRAINING:

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

709.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

(a) Requesting military equipment made available pursuant to 10 USC § 2576a.

(b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.

(d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.

(e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.

(f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.

(g) Acquiring military equipment through any means not provided above.

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709.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

709.6.1 TEMPORARY USE IN EXIGENT CIRCUMSTANCES

The Berkeley Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the acquisition requirements in BMC 2.100.040, however the Department must take the following actions:

(a) Provide written notice of the acquisitions or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state, or federal law

(b) If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and received approval, as applicable from the City Council pursuant to BMC 2.100.040

(c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

709.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

709.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

709.9 MILITARY EQUIPMENT QUESTIONS

Any member of the public may direct their questions regarding this policy and ordinance to a Sergeant in the Professional Standards Bureau at 510-981-5734 or 510-981-5974. Questions may also be directed to police@cityofberkeley.info. Questions will be answered in a timely manner by a member of the Berkeley Police Department.

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709.9.1 MILITARY EQUIPMENT COMPLAINTS
Any member of the public may direct their complaints regarding this policy and any of the military equipment to Internal Affairs Bureau at 510-981-5706.

709.10 ASSOCIATED EQUIPMENT USE POLICIES
The below links will direct to the respective use policies:

300-Use of Force

303-Control Devices and Techniques

349-Tactical Rifle Operator Program

353-Flash/Sound Diversionary Devices

354-Precision Rifle Operator Program

428-First Amendment Assembly

607-Operations, Planning, and Deconfliction

707-Long Range Acoustical Device (LRAD)

708-Robot Cameras

811-Mobile Communications Vehicle (MCV)

709.11 COMPLIANCE
The Department's Audit and Inspection Sergeant will ensure that the Department members comply with this policy. The Audit and Inspection Sergeant will conduct an annual audit with the assistance from members of the Professional Standards Bureau. Any violations will be referred to the Internal Affairs Bureau and handled in accordance with General Order P-26 (Personnel Complaint Procedures). All instances of non-compliance will be reported to the City Council via the annual military equipment report.

The Police Accountability Board shall review and make recommendations to the City Council, with the same procedures and requirements of the Police equipment and Community Safety Ordinance, as described in Berkeley Municipal Code section 2.100.040.

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PROHIBITION ON TEAR GAS, PEPPER SPRAY, AND SMOKE: Special Order 2020-0007

1103.1 COUNCIL POLICY: PROHIBITIONS ON THE USE OF TEAR GAS, PEPPER SPRAY, AND SMOKE.

On June 9, 2020, The Berkeley City Council established an official City of Berkeley policy 1) prohibiting the use of tear gas by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, and 2) prohibiting the use of pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition. Based on their actions, the following policies are now in effect.

1103.2 EFFECTIVE IMMEDIATELY AND UNTIL FURTHER NOTICE:

1. Tear Gas shall not be carried in the field or deployed in any way on any operation.

    (a) This Order overrides all existing policies with regards to the use of tear gas, including but not limited to Policy 303.6 Tear Gas Guidelines, and Policy 428 First Amendment Assemblies.

2. The use of pepper spray or smoke for crowd control is prohibited during the COVID-19 pandemic, until such time as the City Council removes this prohibition, except as set forth in (c) and (d) below.

    (a) The use of pepper spray during routine patrol duties is not affected by this prohibition, and is governed by Policy 303 and General Order U-2.

    (b) The use of pepper projectiles (aka "Pava" rounds) is not affected by this prohibition, except for crowd control purposes, and is governed by Policy 303.

    (c) General Order U-2 Use of Force, Section 20, still applies. Pepper spray may still be used in accordance with Council's existing policy.

        i. Officers shall not use pepper spray as a crowd control technique to disperse or move a crowd. Oleoresin Capsicum (pepper spray) shall not be directed against a person or persons who are engaged in legal speech or other expression that is protected by the First Amendment, nor upon those committing unlawful acts by non-violent or passive resistant means, (e.g. sitting or lying down to block a street or doorway).

    (d) General Order U-2, Use of Force, Section 18 remains in effect.

        18 - In crowd situations, less-than-lethal force and/or chemical agents [including smoke] shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police

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personnel (e.g., [incendiary weapons, explosives] rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).

(a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.

(b) In the event a use of force as described in Section 23 of this Order occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.

(c) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g., the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

(d) Officers deploying pepper spray in a crowd situation shall attempt to limit collateral exposure to non-involved parties. Where there is probable cause to arrest for a crime, officers shall prioritize where practical the arrest of individuals upon whom pepper spray has been deployed.

This Order will remain in effect until it is rescinded or otherwise issued in the form of a policy.

Andrew R. Greenwood

Chief of Police

Issued: August 5th, 2020

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24b

Peace and Justice Commission

ACTION CALENDAR
July 14, 2026
(Continued from April 21, 2026)

To: Honorable Mayor Ishii and Members of the Berkeley City Council

From: Peace and Justice Commission

Submitted by: Pastor Dwayne Phillips, Chairperson, Peace and Justice Commission

Subject: Social Justice Implications of Proposed Use of Controlled Weapons and Other Policing Tools

RECOMMENDATION

Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools:

1. Retain the existing 2020 bans on chemical weapons (CS and OC), and the 1982 bans on police dogs and helicopters.
2. Retain the 1997 requirement for public reporting of each use of pepper spray.
3. Request the City Manager to engage an academic institution such as UC Berkeley, UCSF, or Stanford to study the health impacts of tear gas and other chemical weapons and canine support, potential short-term and long-term impacts on vulnerable populations and possible alternatives to the use of chemical weapons that provide officer safety, suspect safety, and safety to the general public.

SUMMARY

The Peace and Justice Commission recommends applying a social justice lens to policing decisions that could have a significant impact on the lives of Berkeley's residents and visitors, including disparate impact on marginalized, low-income, disabled, elder, and community members of color.

It is the Commission's perspective that human rights must be prioritized above administrative convenience. The Commission further finds that in an era of great polarization, it is essential to build bridges among disparate constituencies, listen to people with diverse points of view, and create solutions that serve all the people in Berkeley. For that reason, we propose that the City Manager request academic support for an independent study of health effects of the proposed weapons and tools.

FISCAL IMPACTS OF RECOMMENDATION
No significant fiscal impact on the City.

CURRENT SITUATION AND ITS EFFECTS
As of the date of this writing, Council members have introduced several resolutions for consideration bearing on BPD chemical weapons and other tools. Three items are currently pending in city council process:

1. "Proposed Resolution Rescinding Berkeley Police Department's Pepper Spray Reporting Requirement." This proposal has passed through the Public Safety Committee with a qualified positive recommendation, and has been placed on the March 10 city council agenda.[1] [NOTE: Council passed an amended version of this proposal on March 10.]

On February 11, the Police Accountability Board (PAB) recommended to Council to continue the requirement for the submission of use of pepper spray reports. The PAB demonstrates that while the proposed resolution is predicated on the existence of redundant reporting, other reports lack narrative information and/or are inaccessible.[2]

2. "Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate Berkeley Police Department's Use of Tear Gas in Limited Situations and Lift the COVID-19 Moratorium on the Use of Smoke and Oleoresin Capsicum (OC) Spray:" This proposal has passed through the Public Safety Committee with a qualified positive recommendation.[3] The Police Accountability Board sent a memorandum to the Public Safety Committee questioning the necessity of resuming use of these chemical agents given how infrequently Berkeley has used them over several decades.[4]

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[1] March 10 2026 City Council agenda, item 17, https://berkeleyca.gov/sites/default/files/2026-02/2026-03-10%20Item%2017%20Resolution%20Rescinding%20Berkeley%20Police%20Department%E2%80%99s.pdf

[2] "Re: Resolution Rescinding Berkeley Police Department's Pepper Spray Reporting Requirement," Police Accountability Board, Feb. 23 2026, berkeleyca.gov/sites/default/files/2026-02/2026-02-23%20PAB%20Letter%20to%20Council_%20Use%20of%20Pepper%20Spray%20Reporting%20%281%29.pdf

[3] Public Safety Policy Committee Jan. 29 2026 agenda, item 4, 29, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-02-19%20Agenda%20Packet%20-%20Public%20Safety.pdf

[4] "Proposed Resolution to Reinstate Berkeley Police Department's Use of Tear Gas and Related Chemical Agents," Police Accountability Board, Jan. 26 2026,

3. "Resolution Rescinding Res. No. 51,408-N.S. Restricting the Use of Air Support and Canine Units and Updating Mutual Aid Policies": Scheduled for hearing at the Public Safety Committee at its next meeting.[5] As of March 9, the resolution is yet to be evaluated by the PAB.

The PAB's February 11 regular meeting included a table prepared by the Office of the Director of Police Accountability (ODPA). This table describes the key differences between the existing and proposed policies with regard to police dogs and helicopters. The table can be found at https://bit.ly/CopterDogProvisions. The ODPA gave this interpretation of the table:

> "The table … shows that the primary changes concern the approval process for requesting helicopter and canine use and the circumstances under which helicopter assistance may be requested through mutual aid agreements.
>
> "The previously permissible uses of helicopter assistance were limited to clearly defined humanitarian and emergency purposes, including disaster response, rescue efforts excluding hostage situations, and locating missing persons….
>
> "The proposal introduces new, explicitly enforcement-oriented justifications, including felony suspect pursuits, vehicle chases, and deployments intended to reduce risk to officers, that go beyond the scope of the earlier permissions. Taken together, the proposed resolution reflects a shift in emphasis from primarily emergency assistance toward authorizing helicopter use as a tactical law enforcement tool, should it be adopted."[6]

At the March 9 2026 meeting, the commission took the following action:

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https://berkeleyca.gov/sites/default/files/2026-02/2026-02-23%20PAB%20Letter%20to%20Council_%20Use%20of%20Pepper%20Spray%20Reporting%20%281%29.pdf

[5] Public Safety Policy Committee Jan. 29 2026 agenda, item 3, 21, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-02-19%20Agenda%20Packet%20-%20Public%20Safety.pdf

[6] "Police Accountability Board Meeting Agenda Packet," Feb. 11, 2026, 82-83, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2026-02-11%20PAB%20AGENDA%20PACKET.pdf

Action: M/S/C (Lippman/Taylor) to adopt the following recommendation: Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools:

1. Retain the existing 2020 bans on chemical weapons (CS and OC), and the 1982 bans on police dogs and helicopters.
2. Retain the 1997 requirement for public reporting of each use of pepper spray.
3. Request the City Manager to engage an academic institution such as UC Berkeley, UCSF, or Stanford to study the health impacts of tear gas and other chemical weapons and canine support, potential short-term and long-term impacts on vulnerable populations and possible alternatives to the use of chemical weapons that provide officer safety, suspect safety, and safety to the general public.

Ayes: Commissioners Phillips, Marasovic, Taylor, Sani, Morizawa, Lippman, McNeil and Press

Noes: Commissioner Fink

Abstain: Commissioners Yasavul, Weisberg, Elias, Mencher and Lee

Absent: Commissioner Cassidy

Excused: None

BACKGROUND

The resolutions currently under consideration by the city council amend or replace ordinances and policies approved by the council in previous years. The existing ordinances and policies include:

On July 15 1982, the City Council passed Resolution 51,408-N.S., establishing a policy for police use of dogs and helicopters from other law enforcement agencies, requiring prior approval by the City Manager, and only for specified purposes, excluding crowd control. See the 1982 policy referenced in Footnote 5.

On September 16 1997, the City Council established a policy that “every time pepper spray is used by the Police Department a Use of Pepper Spray Report similar to the Use of Force Report currently in effect will be completed and sent" to the Council and the Police Review Commission. See the 1997 policy referenced in Footnote 1.

On June 6 2020, in the wake of the murder of George Floyd by Minneapolis police, the City Council established a permanent ban on the use of CS (tear gas) and a moratorium on the use of OC (pepper spray) and smoke. The moratorium was in part due to the effect of the COVID-19 pandemic which caused respiratory distress to large numbers of people. It was also a step toward addressing over-policing and the use of military-style weaponry on civilians.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Physicians for Human Rights states that chemical irritants including both CS ("tear gas" and OC (pepper spray) can spread to affect people other than the intended target.[7] CS often has a wide spray pattern. OC is considered more targeted than CS, but wind can affect the direction of the fumes to affect bystanders and even the user.[8]

RATIONALE FOR RECOMMENDATION

1. Pepper Spray (OC) reporting.

The Peace and Justice Commission supports the PAB letter calling for the continuation of pepper spray use reporting. We would add that if the BPD intends to continue or even expand use of pepper spray, it is to their benefit that the community understand the context of its usage.

2. "Tear gas" (CS), Pepper Spray (OC), and Smoke

This is a complex proposal covering multiple chemical weapons.

The Peace and Justice Commission recommends Council retain the ban on CS ("tear gas") and the moratorium on OC and Smoke for these four reasons:

A. CS and OC are dangerous weapons that are properly considered "less-lethal," not "non-lethal."

B. CS and OC are particularly dangerous to the health of people with disabilities, especially respiratory or environmental sensitivities, and also those suffering from mental or behavioral disorders.

[7] "Health Impacts of Crowd-Control Weapons: Chemical Irritants (Tear Gas and Pepper Spray)," Physicians for Human Rights, Jan. 1 2017, https://phr.org/our-work/resources/health-impacts-of-crowd-control-weapons-chemical-irritants-tear-gas-and-pepper-spray/

[8] "Pepper Spray Safety Precautions," Sept. 12, 2024, https://www.divasfordefense.com/blogs/self-defense-articles-educational-material/pepper-spray-handling-safety-precautions?srsltid=AfmBOops00prGllerpYmjsPYnV5EIGesRj1WXJWr9Xrs5B8cuD6Hwos6

C. Approval of chemical weapons such as CS for any use opens the door to the possibility of use for other purposes and in other manners.

D. Berkeley's Precautionary Principle ordinance requires showing that actions do no harm to human health or the environment.

Dangers of CS ("tear gas"), particularly to people with disabilities

Over decades of research, scientists have shown a strong potential harm from CS use in policing. An Oakland Police Department policy warns,

> "Chemical agents can produce serious injuries, or even death," and officers are to "use the minimum amount of chemical agent needed to obtain compliance." Further, "the use of hand-thrown chemical agents or pyrotechnic gas dispersal devices may present a risk of permanent loss of hearing or serious bodily injury from shrapnel."

The common and incorrect term "tear gas" makes CS seem trivial. It is actually not even a gas but an aerosol, made up of ultra-fine particles, or UFPs. Aerosols are dangerous to lung health because, according to the U.S. National Library of Medicine,

> "The small size of UFPs allows them to penetrate deep into the respiratory tract, causing effects from mild respiratory issues to cardiovascular and respiratory mortality, lung cancer, neurological diseases, and mutagenic or carcinogenic impacts…. Substantial evidence links [ultrafine particulate matter] exposure to increased hospital admissions and premature deaths among vulnerable populations, particularly the elderly and those with pre-existing conditions."[9]

Potential for non-compliant or unauthorized uses of CS

The Commission appreciates the exception to ban use of CS in crowd control.

However, good policy is necessary but not sufficient for good practice. Once a weapon is acquired and approved for limited use, it is almost inevitable that it will be

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[9] Damiati, "Aerosol Pollutants and Health: Role of Size and Chemical Composition," Sept. 26 2025, https://pmc.ncbi.nlm.nih.gov/articles/PMC12466196/#:~:text=In%20densely%20populated%20areas%2C%20aerosols,COPD%20%5B31%2C%2032%5D.
For more on the effect of CS on the lung, particularly on "people with preexisting respiratory conditions, see:
American Lung Association, Jan. 20 2026, https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/toxic-air-pollutants/tear-gas

used for out-of-policy use. As an example, we refer to the last large-scale use of CS, the police response to Black Lives Matter protests in December 2014.

On December 6, BPD drove a largely peaceful march almost a mile down Telegraph from the UC campus past the Oakland city line. The direction from BPD command to the officers was to "Get'Um Running!" To implement this direction, officers shot less-lethal projectiles into the crowd, hit marchers with batons, and launched some 50 cans of CS gas, such a large amount that they nearly exhausted their supply. The Police Review Commission's (PRC) after-incident report stated:

> "The crowd complied with officer demands to move south, but the police continued to pursue them, deploying CS gas at six intersections on Telegraph and using raised batons and baton jabs. No evidence of dangerous crowd activity has been provided to the commission to justify these repeated uses of force.
>
> "The combination of repeated CS gas exposure along with the lengthy walk was extremely impactful, and there were reports of protestors suffering physical and emotional injuries as a result. The marchers were driven over the city line into Oakland around 1:30 AM."[10]

For context, in 1991, after an earlier scandal regarding police action against protestors in People's Park, the City enacted a policy that "no crowd could be forced to move faster than they were reasonably capable of moving." But in 2014, the use of mass quantities of CS along with baton strikes were ordered explicitly to drive protestors on a forced run all the way to Oakland.

As Physicians for Human Rights has observed, "The physical symptoms of chemical irritants often result in disorientation and agitation, which can lead to a state of fear, anxiety, and panic."[11] The 2014 use of CS was an escalation, not a move toward de-escalation, and made compliance with police orders extremely difficult.

Therefore, while CS use in crowd control was still legal in 2014, the manner of its use was contrary to City policy of that day. This recent history shows that stated policy is not enough to ensure that this department, when in possession of dangerous military armaments, will use them appropriately.

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[10] "Report of Investigation Into the Response to Protest on December 6, 2014," Berkeley Police Review Commission, Dec. 1 2015, https://berkeleyca.gov/sites/default/files/2026-01/2015-12-01-Item-32a-Report-of-Investigation.pdf

[11] "Health Impacts of Crowd-Control Weapons: Chemical Irritants (Tear Gas and Pepper Spray)," Physicians for Human Rights, Jan. 1 2017, https://phr.org/our-work/resources/health-impacts-of-crowd-control-weapons-chemical-irritants-tear-gas-and-pepper-spray/

Issues with OC (pepper spray) and smoke; the deadly and racially biased history of OC

The risk of OC should not be cavalierly dismissed by claiming, as the council proposal does, that "the specific health concerns that necessitated the temporary moratorium on smoke and OC spray are no longer present." The ACLU reported in 1998 that in the first five years since the approval of its use by police, at least 33 people had died in California after being sprayed and restrained. Nearby Antioch paid the family of 29-year-old Derek Wallace $362,000 after their officers subdued him with the spray.[12]

A Berkeley freelance journalist mapped the use of pepper spray in the mid 1990s and found that they largely affected Black men, in low-income, minority neighborhoods, and primarily an area in South Berkeley, centered on Alcatraz and Sacramento, dubbed the "Pepper Spray Triangle."[13]

Berkeleyans have long memories. The author of the resolution speaks of a "large-scale riot" in 2014 in which BPD was compelled to use tear gas on residents. Demonstrators for Black Lives Matter remember a largely peaceful march which was provoked by a police gauntlet in which many were beaten with batons. For many in the community, time has not abated the blow. Today, with the federal government at war with the people, may be the worst time to suggest restarting use of CS/tear gas.

Smoke also cannot be called a safe police tool. Health impacts are dependent on the chemicals in the smoke, pre-existing health conditions, location of the smoke, and other police tactics applied. According to medical experts, hexachloroethane smoke is "demonstrably more dangerous" than tear gas. This chemical agent should be studied and proven safe before approved for police use.[14]

There appear to be no constraints on the use of either OC or smoke in the proposal before council.

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[12] Heredia, "Antioch Settles Pepper Spray Case For $362,000 / 29-year-old man died after police subdued him," *SF Chronicle,* Feb 11 1998, https://www.sfgate.com/news/article/antioch-settles-pepper-spray-case-for-362-000-3013916.php

[13] *East Bay Express*, Dec. 12, 1997

[14] Foster, "The US Government Keeps Using Dangerous Chemicals on Protesters," *Mother Jones*, Feb. 19, 2026, https://www.motherjones.com/politics/2026/02/ice-facility-portland-what-chemicals-used-tear-gas-hc-smoke-protests/#:~:text=The%20smoke%20releases%20zinc%20chloride,and%20cancer%20with%20repeated%20exposure

The Commission reminds the Council of the Precautionary Principle that it adopted in 2006. The Principle is an approach to decision-making that prioritizes preventing harm to human health and the environment. The Principle shifts the burden of proof, requiring actions to be proven safe, rather than waiting for proof of damage to restrict them. We recommend that lacking proof of safety, the proposal to authorize CS, pepper spray, and smoke should not be approved.[15]

Given the prevalence of Long COVID, Berkeley's rapidly aging population, the large number of environmentally sensitive residents, and the city's legacy as the birthplace of disability rights, it is neither sensitive nor appropriate for the proposal to state that the emergency is over and the health conditions that necessitated the moratorium are no longer present.

3. "Air Support" (police helicopters) and "Canine Support" (police dogs)

The Peace and Justice Commission shares the ODPA's concerns about the shift in emphasis in use of helicopters from emergency assistance to tactical law enforcement.

Police helicopters provoke concern in a number of communities for "unhealthy noise pollution, inefficient spending and instances of bias by over-policing certain neighborhoods. Officers in the LAPD often disgracefully go so far as to call the helicopters 'ghetto birds,' sociologist Sarah Brayne wrote in her book *Predict and Surveil*."[16]

Berkeley restricted use of police dogs in the aftermath of their brutal use particularly in the South, but across the country as well.[17] In the last two decades, at least two lawsuits were settled by Hayward, one for $1.5 million. One dog is said to have bitten about 30 people, two or three of them uninvolved bystanders, one an 89-year-old who died of his wounds.[18]

The issues raised above with regard to chemical agents, about the Precautionary Principle, building trust between the people and the city government, and the possibility of out-of-policy use, apply also to helicopters and dogs.

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[15] BMC Chapter 12.29, Precautionary Principle, March 21, 2006, berkeleyca.gov/sites/default/files/documents/Precautionary%20Principle%20Ordinance%20-%206911.pdf

[16] McQuarrie, "'Ghetto birds': California has yet to reckon with longstanding bias from police helicopters," *CalMatters*, July 3 2024, https://calmatters.org/commentary/2024/07/california-longstanding-bias-police-helicopters/

[17] Dowd, "The Violent, Racist History of K-9 Units," *Vice*, Sept. 7 2022, https://www.vice.com/en/article/k9-unit-history/

[18] Parr, "Hayward to pay $1.5 million to settle police dog attack suit," *East Bay Times*, Jul. 17 2013, https://www.eastbaytimes.com/2013/07/17/hayward-to-pay-1-5-million-to-settle-police-dog-attack-suit/

The Commission is also concerned about the removal of required pre-approval by the City Manager for both dog and helicopter deployment. When taken as a pattern, the removal of this check combined with the refusal of the police chief to fully cooperate with the PAB/ODPA's City Charter-mandated requests for department records, the chronic under-appointing of the PAB, and the vacant position of Director of Police Accountability, the City risks a public perception that it no longer values civilian oversight.

ALTERNATIVE ACTIONS CONSIDERED
None

CITY MANAGER
Given that these policy matters are in the process of coming before the City Council, the City Manager will address them as they are heard by the City Council and recommends taking no action on them prior to the items being before the City Council.

CONTACT PERSON
Tasha Tervalon, Assistant to the City Manager, Commission Secretary, City Manager's Office, 510-981-7000

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Office of the City Manager

INFORMATION CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Wahid Amiri, Interim Public Works Director

Subject: Grant Applications: Alameda County Transportation Commission Capital Investment Program 2028/Metropolitan Transportation Commission One Bay Area Grant Program Cycle 4

INTRODUCTION

Department of Public Works Transportation Division staff are preparing two transportation capital project grant applications to be submitted in July 2026 to Alameda County Transportation Commission (Alameda CTC) for the Capital Investment Program (CIP) 2028/Metropolitan Transportation Commission (MTC) One Bay Area Grant Program Cycle 4 (OBAG 4). This report provides information about these upcoming grant applications which are currently in development. Staff anticipates bringing these applications to the Berkeley Transportation and Infrastructure Commission (TIC), and following that, returning for City Council authorization which will be requested at the September 2026 meeting.

CURRENT SITUATION AND ITS EFFECTS

Public Works is seeking to fund capital transportation safety projects that have been recommended in the Bicycle Plan, Pedestrian Plan, Transit-First Policy Implementation Plan, as well as in Safe Routes to Schools (SR2S) School Safety Assessments (SSAs) developed by the Alameda CTC SR2S program in partnership with Berkeley Unified School District (BUSD) SR2S Task Forces at each participating school. In addition to Alameda CTC SR2S staff and City staff, these Task Forces consist of school administration, teachers, parents, and students.

The proposed projects are part of two distinct grant applications:

1. Sacramento Street Pedestrian, Bicycle, and Transit Improvements Project (Alameda CTC CIP 2028/OBAG 4 grant application): This application includes physical improvements to support the safety of people walking and biking across Sacramento Street at both signalized and uncontrolled intersections between Channing Street in the north to Alcatraz Street in the south. Note that this project scope excludes the Ashby Avenue (State Route 13) intersection to avoid delaying project delivery with complex Caltrans coordination. The project includes bus boarding islands, intended to improve bus operations and travel

speeds, while also shortening pedestrian crossing distances. Additional improvements include signalization to support bike boulevard crossings, signal modifications to improve pedestrian safety and accessibility, and additional pedestrian safety measures such bulbout curb extensions, raised medians, rectangular rapid flashing beacon (RRFB) signals, all of which to be determined through the design process. Proposed improvements have been identified in the City's Bicycle and Pedestrian plans and are consistent with the City's Transit-First Policy Implementation Plan.

2. Citywide SR2S SSA Implementation (Alameda CTC CIP 2028 SR2S Program Grant Application): This application draws on the SSAs developed by Alameda CTC SR2S program in partnership with BUSD school SR2S Task Forces. This grant will aim to implement improvements identified in the SSAs, beginning with the oldest and moving to the newest, with consideration of feasibility and cost in the selection of the final scope of work for the application. Likely measures include bulbouts, median refuges, and RRFBs to support safe street crossings to access school sites.

Implementing projects recommended by the City's Bicycle Plan, Pedestrian Plan, Transit-First Policy Implementation Plan, as well as from SR2S SSAs is a Strategic Plan Priority advancing our goals to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities, and create a resilient, safe, connected, and prepared city.

BACKGROUND

Alameda CTC is responsible for the planning, programming and allocation of federal, state, regional, and local funding for transportation improvements throughout Alameda County, via the Alameda County Comprehensive Investment Plan (CIP). Alameda CTC releases a call for CIP projects approximately every two years. CIP 2028 will award approximately $200 million in funding to jurisdictions in Alameda County. OBAG is a major funding initiative that distributes federal and regional transportation infrastructure dollars to local governments and county transportation agencies approximately once every four years. MTC's OBAG 4 is the fourth cycle of the One Bay Area Grant program and includes approximately $820 million in federal funding to support transportation projects and programs for the entire nine-county region. MTC coordinates with county transportation authorities such as Alameda CTC which in turn work with local agencies to identify projects for consideration for OBAG funding. In Alameda County, the CIP and OBAG calls for projects are coordinated every four years to match OBAG cycles.

City of Berkeley has a strong history of success with OBAG funding for transformative transportation projects, including OBAG 1 funding for the goBerkeley Parking Pilot Project, the Hearst Complete Streets Project, and the Shattuck Reconfiguration Project; and OBAG 2 funding for the Southside Complete Streets and Transit Improvements Project.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Increasing walking, biking, and transit use in Berkeley would help achieve the City's Climate Action Plan greenhouse gas emission reduction targets of 80% below year 2000 levels by 2050. The Climate Action Plan states that, to meet these targets, "Transportation modes such as public transit, walking and bicycling must become the primary means of fulfilling our mobility needs." Environmental clearance to meet the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA) will be conducted for each project as required by the type of funding that may ultimately be awarded.

POSSIBLE FUTURE ACTION

Public Works Transportation Division staff are preparing grant applications to be submitted in July 2026 to Alameda CTC. Staff anticipates requesting Council authorization and approval of the MTC-required Resolution of Local Support for these grants at the September 2026 Berkeley City Council meeting. Staff anticipates seeking Transportation and Infrastructure Commission (TIC) approval of the MTC-required Complete Streets Checklist for the Sacramento Street project, prior to the September 2026 Berkeley City Council meeting.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

If successful, Berkeley's Alameda CTC CIP 2028/OBAG 4 grant applications could bring in a maximum of $11M of new transportation funding - $10M for Sacramento Street Pedestrian, Bicycle, and Transit Improvements Project and $1M for Citywide SR2S SSA Implementation. This funding would require up to $2.75M of local matching funds, currently proposed to come from Measure FF. Both the Sacramento St and SR2S applications are consistent with the goals of Measure FF, and applying for these grants allows the City to leverage FF funding to raise additional revenue for transportation improvements, expanding the potential scope and effectiveness of the original bond measure.

CONTACT PERSON

Wahid Amiri, Interim Director of Public Works,(510) 981-6396
Mark Helmbrecht, Transportation Manager, (510) 981-6403
Eric Anderson, Principal Planner, (510) 981-7062

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Office of the City Manager

INFORMATION CALENDAR
July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Zero Waste Commission

Submitted by: Steven Sherman, Chair

Subject: Zero Waste Commission Fiscal Year 2026-27 Work Plan

INTRODUCTION

The Zero Waste Commission (ZWC) advises the City Council on solid waste ("zero waste") policy and goals, including refuse, composting, and recycling services, budgets, and other decisions relating to solid waste. The ZWC unanimously adopted the FY 2026-27 Work Plan on April 15, 2026.

CURRENT SITUATION AND ITS EFFECTS

The City is enacting important changes and improvements to its Zero Waste services and long-term plans, including:

- Continuing the process to design the re-build of the Solid Waste & Recycling Transfer Station;
- Implementing various local ordinances and state laws to reduce the generation of discarded products, packaging and materials, and to increase the composting of food scraps; and
- Developing a division-level strategic plan for zero waste.

The City's long standing goals regarding zero waste include:

1. Provide state-of-the-art, well-maintained publicly-owned infrastructure, amenities, and facilities; and
2. Serve as a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

The following topics have shaped Zero Waste in the City and are monitored closely by the ZWC, including the goals for the upcoming fiscal year.

Zero Waste Strategic Plan: A draft plan has been completed by the City's consultants. Whereas new programmatic and policy elements of the draft plan are relatively modest in scope and cost, infrastructure upgrades to the Transfer Station, as currently conceived by staff and its consultant, are very substantial in scope and estimated cost.

SB 1383 - Food Recovery and Organics Diversion: This State of California law requires local governments to reduce the landfilling of compostable materials, to reduce climate change effects associated with methane emissions resulting from the landfilling of such items. Implementation of State Law SB 1383 requires the City and subsequently the Zero Waste Division to provide education and outreach to residents and businesses, monitor contamination, manage an edible food recovery program, and many more activities.

Zero Waste Ordinances: The City has adopted various zero waste ordinances over time. Now that their effects are being observed in practice, some of them may merit modifications to improve their effectiveness. Many Zero Waste ordinances and programs have been evaluated for effectiveness in the City of Berkeley in the draft Zero Waste Plan.

Accepted Materials in City Collection Programs: Periodically, the list of accepted materials in City collection programs deserves review. This is especially prudent with the adoption of SB 54, which becomes effective January 1, 2026. Review of accepted materials lists for the City's recycling and composting programs will be required. Additionally, consideration of harder-to-recycle materials potentially could be added to City collection services, such as batteries.

Zero Waste Program Oversight: Two primary topics for consideration involve the Commission's role in advising Council on whether the content of draft competitive solicitations for zero waste services (e.g., compostables, recyclables, refuse, reusables, household hazardous waste, etc.), and review of any draft zero waste rate adjustments, are consistent with the City's zero waste-related goals, services, and policies.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Potential to reduce the disposal of products, packaging, and other materials via waste reduction, re-design, reuse, repair, recycling, and composting, with positive effects on resource conservation, climate change mitigation, and local economic development.

POSSIBLE FUTURE ACTION

The ZWC may provide recommendations to the City Council from time to time regarding topics contained in this report.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The work of the Zero Waste Commission does not have any fiscal impact on the City directly. However, recommendations, including the City's draft Zero Waste Strategic Plan will contain numerous recommendations that have potential fiscal impacts, particularly infrastructure upgrades, compliance requirements, and program service expansion.

CONTACT PERSON
Julia A. Heath, Recycling Program Manager, Public Works, (510) 981-6357

Attachments:
1: Zero Waste Commission Work Plan Matrix

Zero Waste Commission

FISCAL YEAR 2026-27 WORK PLAN

The following goals and activities for the ZWC have been identified for fiscal year (FY) 2026-27 and are provided in Table 1, below:

Goal	Resources	Program Activities	Outputs	Outcomes
Advocate for City Council to adopt the Zero Waste Strategic Plan	Consulting team, City staff, other commissions	Work to build momentum towards adoption of the zero waste plan and rates to support zero waste activities. Distribute information to increase public input and build consensus with other commissions	Articulation of the benefits of and risks of non-adoption to Councilmembers and other identified stakeholders	Support for the adoption of a comprehensive, detailed strategic plan and funding to achieve City's zero waste goals
Support community engagement regarding zero waste in Berkeley	City Staff, Ecology Center, UC Berkeley/Cal Zero Waste, BUSD, the public	Presentations at ZWC by practitioners. Join other Commission meetings and zero waste events in the community	Foster public support for zero waste activities and programs. Have attendance by a least one commissioner at 10 events during the year	Foster zero waste goals and awareness in the community
Strengthening existing and adopting new zero waste ordinances outlined in the draft zero waste plan	City Staff, consulting team, Ecology Center, UC Berkeley/Cal Zero Waste, BUSD	Through subcommittees, and then the commission as a whole, evaluate and recommend ways to strengthen existing City ordinances and to support adoption new ones that further efforts to achieve zero waste goals	Staff reports, draft ordinance language, and recommendations to Council as needed	Support for strengthened and new zero waste ordinances

Review and assessment of accepted materials: inclusion or exclusion in City collection services	City staff, Urban Ore, CCC, Ecology Center, CAW, NCRA, CPSC, StopWaste, others	Presentations at ZWC by specialists. Review list of accepted materials, and recommend changes, particularly with the onset of SB 54	Recommendations to Council as needed	To help Council have an accurate understanding of City's collection services and the extent to which they align with the City's goals
Monitor outside resources and funding opportunities	City Staff, StopWaste, CalRecycle, California Product Stewardship Council	Presentations by outside organizations to help ZWC track and understand proposed legislation, for the purpose of advising Council	Recommendations to Council as needed	To help establish effective, fiscally prudent laws that support City's zero waste goals
Preliminarily assess organization and oversight considerations regarding the City's Zero Waste Program	City staff, consulting team, other commissions, other communities	Research other communities' practices for: (a) public oversight of rate-setting processes; (b) administrative structure for leading zero waste programs	Preliminary assessment of organization and oversight considerations regarding the City's Zero Waste Program	Hold preliminary discussions with City Councilmembers about preliminary findings and potential opportunities

Communications

All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
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Records Online
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