



Office of the City Manager

ACTION CALENDAR  
November 7, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Initiative Petition – Initiative Ordinance Prohibiting Concentrated Animal Feeding Operations in the City of Berkeley

RECOMMENDATION

1) Take action on the initiative petition to:

a) Adopt the provisions of the measure without alteration.

-OR-

b) Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 5, 2024 General Municipal Election.

2) 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 Prohibiting Concentrated Animal Feeding Operations in the City of Berkeley” was filed with the City Clerk on September 5, 2023. The proponents of this petition submitted 4,989 prima facie signatures.

Under Berkeley City Charter Article XIII, a successful initiative petition must include valid signatures of at least 5% (2,985) of the votes for all candidates for Mayor in November 2020 (57,885).

The Alameda County Registrar of Voters verified the signatures by reviewing a random sampling of 500 signatures in accordance with State Elections Code §9215. This statistical sampling found 419 valid signatures. When this ratio of valid signatures is applied to the actual number of signatures submitted, it results in a validity rate of 134%, which exceeds the required threshold in the state Elections Code for the petition to be deemed sufficient. Therefore, the petition was certified by the Registrar of Voters as being sufficient on September 25, 2023.

Initiative Petition

ACTION CALENDAR

November 7, 2023

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.

### BACKGROUND

Pursuant to the City Charter, Article XIII §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.

### 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.

CALLING THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 5, 2024 AND SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE PROHIBITING CONCENTRATED ANIMAL FEEDING OPERATIONS IN THE CITY OF BERKELEY

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 5, 2024 General Municipal Election, an initiative measure prohibiting Concentrated Animal Feeding Operations in the City of Berkeley; and

WHEREAS, certain actions are required in connection with said election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the General Municipal Election to be held in the City of Berkeley on November 5, 2024, is hereby called.

BE IT FURTHER RESOLVED as follows:

1. In accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Presidential General Election to be held November 5, 2024, and to authorize the county elections official to render services specified.
2. The Registrar of Voters of Alameda County is requested to perform services in connection with said election at the request of the City Clerk. These services include all necessary services related to signature checking for nomination petitions and signatures-in-lieu of filing fee, official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, drop boxes, voting centers, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election.
3. The Board of Supervisors of Alameda County is requested to include on the ballots and sample ballots, all qualified measures submitted by the City Council to be ratified by the qualified electors of the City of Berkeley.
4. That the City of Berkeley acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418.
5. The City Clerk is hereby directed to cause the posting, publication, and printing of all notices or other election materials pursuant to the requirements of the Charter of the City of Berkeley and the Elections and Government Codes of the State of California.
6. 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.

7. The City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.

BE IT FURTHER 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 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:

CITY OF BERKELEY INITIATIVE ORDINANCE	
Shall the measure prohibiting the establishment within the City of Berkeley of facilities where livestock are kept for 45 days or more in a 12-month period and which meet size and other regulatory thresholds established by the Environmental Protection Agency; prohibiting the expansion of existing facilities; requiring existing facilities to cease operations within one year; establishing a penalty of \$10,000 per violation per day; and allowing enforcement by the City Council or by private lawsuit, 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

## PROHIBITION ON CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs)

The People of the City of Berkeley ordain as follows:

That Chapter 23.336 Prohibition on Concentrated Animal Feeding Operations (CAFOs) be added to to Title 23 ZONING of the Berkeley Municipal Code as follows:

### Chapter 23.336 Prohibition on Concentrated Animal Feeding Operations (CAFOs)

#### Section 23.336.010 Findings.

- A. Hundreds of concentrated animal feeding operations (CAFOs) presently operate in California.
- B. Animal agriculture is responsible for 38% of methane emissions in the United States, and it is projected that the global agriculture sector will nearly double in greenhouse gas emissions by 2050.
- C. By worsening climate change via the release of greenhouse gases, CAFOs are a major contributor to the drought and wildfires in California.
- D. CAFOs are contributing to the ongoing water crisis in California, with some facilities using up to 4 million gallons of water per day and others polluting water sources with chemical fertilizers and manure.
- E. Globally, animal agriculture is the primary driver of biodiversity loss through its dependence on inputs such as fertilizer, pesticides, energy, land, and water, and on practices such as monocropping and heavy tilling, which in turn reduces the variety of landscapes and habitats.
- F. It is a well-established scientific fact, as supported by 2,500 studies exploring animal cognition, that nonhuman animals have emotions, personalities, and the ability to feel pain, fear, and stress.
- G. Millions of nonhuman animals are routinely confined and abused in CAFOs across California.
- H. The treatment of nonhuman animals in CAFOs routinely violates California animal cruelty laws, with little to no enforcement.
- I. Three out of four emerging infectious diseases are zoonotic, and CAFOs pose a serious risk to public health.
- J. Investigators have found antibiotic resistant bacteria and infectious diseases in CAFOs in California and across the U.S.
- K. Workers in the animal agriculture industry experience higher rates of substance abuse, post-traumatic stress disorder (PTSD), and domestic violence.
- L. In summary, CAFOs are a leading cause of environmental destruction, pose grave risks to public health, abuse and kill nonhuman animals, and often create dangerous and exploitative conditions for workers.

#### Section 23.336.020 Prohibition on Establishment and Operation of Concentrated Animal Feeding Operations (CAFOs)

- A. *Definitions.* For purposes of this chapter, the following definition shall apply:
  - a. "Concentrated Animal Feeding Operation" or "CAFO" means an agricultural operations where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and which meets

the regulatory definition set out by the Environmental Protection Agency seen in the following table

**Regulatory Definitions of Large CAFOs, Medium CAFO, and Small CAFOs**

A **Large CAFO** confines at least the number of animals described in the table below.

A **Medium CAFO** falls within the size range in the table below and either:

- Has a manmade ditch or pipe that carries manure or wastewater to surface water; **or**
- the animals come into contact with surface water that passes through the area where they're confined.

If an operation is found to be a significant contributor of pollutants, the permitting authority may designate a medium-sized facility as a CAFO.

A **Small CAFO** confines fewer than the number of animals listed in the table **and** has been designated as a CAFO by the permitting authority as a significant contributor of pollutants.

Animal Sector	Size Thresholds (number of animals)		
	Large CAFOs	Medium CAFOs <sup>1</sup>	Small CAFOs <sup>2</sup>
cattle or cow/calf pairs	1,000 or more	300 - 999	less than 300
mature dairy cattle	700 or more	200 - 699	less than 200
veal calves	1,000 or more	300 - 999	less than 300
swine (weighing over 55 pounds)	2,500 or more	750 - 2,499	less than 750
swine (weighing less than 55 pounds)	10,000 or more	3,000 - 9,999	less than 3,000
horses	500 or more	150 - 499	less than 150
sheep or lambs	10,000 or more	3,000 - 9,999	less than 3,000
turkeys	55,000 or more	16,500 - 54,999	less than 16,500
laying hens or broilers (liquid manure handling systems)	30,000 or more	9,000 - 29,999	less than 9,000
chickens other than laying hens (other than a liquid manure handling systems)	125,000 or more	37,500 - 124,999	less than 37,500
laying hens (other than a liquid manure handling systems)	82,000 or more	25,000 - 81,999	less than 25,000

ducks (other than a liquid manure handling systems)	30,000 or more	10,000 - 29,999	less than 10,000
ducks (liquid manure handling systems)	5,000 or more	1,500 - 4,999	less than 1,500

<sup>1</sup> Must also meet one of two "method of discharge" to be defined as a CAFO or may be designated.

<sup>2</sup> Never a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis.

*B. Prohibition.*

- a. No person, corporation, or other entity shall establish a CAFO of any size within the city of Berkeley.
- b. No person, corporation, or other entity shall expand an existing CAFO of any size within the city of Berkeley.
- c. Any CAFO in operation within the city of Berkeley at the time of this initiative's passage shall be phased out within a period of 1 year.

Section 23.336.030 Enforcement and Penalties.

- A. The The City Council shall have the authority to enforce this initiative, including the power to inspect premises suspected of violating its provisions.
- B. This Chapter also provides a private right of action upon any person or entity to seek injunctive relief and penalties against a person or business who violates this prohibition.
- C. Any person that violates this prohibition is civilly liable for a penalty in an amount of \$10,000 per violation per day.
- D. A court shall award a plaintiff who prevails on a cause of action reasonable attorney's fees and costs.

Section 23.336.040 Severability.

If any provision of this initiative is found to be invalid or unconstitutional, such finding shall not affect the validity or constitutionality of the remaining provisions.

Section 23.336.050 Effective Date.

This initiative shall become effective immediately after its passage by the voters.

**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 Prohibiting Concentrated Animal Feeding Operations in the City of Berkeley" was filed with the Berkeley City Clerk on September 5, 2023 within the statutory time limit and forwarded to the office of the Alameda County Registrar of Voters for verification on September 6, 2023; and

The petition contained **4,989** 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 **2,985** 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 **134%** 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 26th day of October, 2023.



  
Mark Numainville  
City Clerk  
City of Berkeley



**REGISTRAR OF VOTERS CERTIFICATE TO PETITION**

I, **Tim Dupuis**, Registrar of Voters for the County of Alameda, State of California, hereby certify that: an Initiative Entitled: City of Berkeley Ordinance Prohibiting Concentrated Animal Feeding Operations was filed with the Berkeley City Clerk within the statutory time limit and forwarded to this office for verification on September 6, 2023; and

The petition contained 4,989 unverified signatures: and

In accordance with Article XIII of the Berkeley City Charter, it was determined that the total number of votes cast for all candidates for Mayor at the November 2020 General Election was 57,885, the requisite number of signatures required to qualify this initiative is 5% of 57,885 or 2,985.

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

Have determined that the petition contained 419 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 134% 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 25<sup>th</sup> day of **September 2023**.



DocuSigned by:  
*Cynthia Cornejo* for  
6E5C0617DC2444D  
Tim Dupuis  
Registrar of Voters  
County of Alameda  
State of California

