# AGENDA
# BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING

**TUESDAY, APRIL 1, 2025**
**2:30 P.M.**

Redwood Room – 2180 Milvia Street, Sixth Floor, Berkeley, CA 94704

Committee Members:

Mayor Adena Ishii, Councilmembers Terry Taplin and Mark Humbert

Alternate: Ben Bartlett

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. All Committee meetings are recorded.

Use this URL https://cityofberkeley-info.zoomgov.com/j/1607420968 to access the meeting remotely. 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: 160 742 0968**. To provide public comment, press *9 and wait to be recognized by the Chair. To submit a written communication for the public record, email policycommittee@berkeleyca.gov.

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.

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

# AGENDA

**Roll Call**

**Public Comment**

## Review of Agendas

1. **Approval of Minutes: March 10, 2025**
2. **Review and Approve Draft Agenda:**
   a. 4/15/25 – Regular City Council Meeting
3. **Adjournments In Memory**

## Scheduling

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

## Referred Items for Review

- **None**

## Unscheduled Items

7. **City Council Legislative Systems Redesign, Including Strengthening the Committee System to Provide More In-Depth Review and Vetting of Major Items**

## Items for Future Agendas

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

**Adjournment – Next Meeting Monday, April 14, 2025**

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

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

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

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

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

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

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

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

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# BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING MINUTES

**MONDAY, MARCH 10, 2025**
**2:30 P.M.**

Redwood Room – 2180 Milvia Street, Sixth Floor, Berkeley, CA 94704

Committee Members:

Mayor Adena Ishii, Councilmembers Terry Taplin and Mark Humbert

Alternate: Ben Bartlett

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Use this URL https://cityofberkeley-info.zoomgov.com/j/1611694310 to access the meeting remotely. 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: 161 169 4310**. To provide public comment, press *9 and wait to be recognized by the Chair. To submit a written communication for the public record, email policycommittee@berkeleyca.gov.

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**Roll Call:** 2:33 p.m. All present. Councilmember Humbert attended remotely under the just cause exception in the Brown Act.

**Public Comment** – 3 speakers

## Review of Agendas

1. **Approval of Minutes: March 3, 2025**
   **Action:** M/S/C (Humbert/Taplin) to approve the minutes of 3/3/2025.
   **Vote:** All Ayes.

2. **Review and Approve Draft Agenda:**
   a. 3/25/25 – Regular City Council Meeting
   **Action:** M/S/C (Taplin/Humbert) to approve the agenda of 3/25/2025 with the changes noted below.
   - *Item 9 CAL FIRE Map (City Manager) – referred to Public Safety Committee*
   - *Item 10 Fire Code (City Manager) – referred to Public Safety Committee*

   Order of Action Calendar
   Item 7 Zoning Amendment
   Item 8 ZAB Appeal
   Item 11 a\b Sugar-Sweetened Beverage Programs
   **Vote:** All Ayes.

3. **Selection of Item for the Berkeley Considers Online Engagement Portal** – None Selected

4. **Adjournments In Memory** – None

## Scheduling

5. **Council Worksessions Schedule** – received and filed

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

7. **Land Use Calendar** – received and filed

## Referred Items for Review

- **None**

## Unscheduled Items

8. **City Council Legislative Systems Redesign, Including Strengthening the Committee System to Provide More In-Depth Review and Vetting of Major Items**

## Items for Future Agendas

- **None**

## Adjournment

**Action:** M/S/C (Taplin/Humbert) to adjourn the meeting.
**Vote:** All Ayes

Adjourned at 2:53 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on March 10, 2025.

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Mark Numainville, City Clerk

## Communications

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

# DRAFT AGENDA

# BERKELEY CITY COUNCIL MEETING

## Tuesday, April 15, 2025
## 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 attendance and virtual participation. Live captioned broadcasts of Council meetings are available on B-TV (Channel 33) and via internet video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244. All Council meetings are recorded.*

*To access the meeting remotely use this URL: <<INSERT ZOOM for GOV URL HERE>>. 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: <<INSERT MEETING ID HERE>>****. 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.*

*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.*

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## Preliminary Matters

### Roll Call:

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

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

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

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

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

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

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

## Consent Calendar

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

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

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

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

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

## Consent Calendar

**1. Proposed Amendments to the Building Emissions Saving Ordinance (BESO); Amending Berkeley Municipal Code Chapter 19.81**
**From: City Manager**
**Recommendation:** Adopt a second reading of Ordinance No. 7,953-N.S. amending the Building Emissions Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to establish a flexible resilience standard for small residential buildings containing up to four units.
**First Reading Vote:** All Ayes.
**Financial Implications:** See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Consent Calendar

**2. Establishment of M-RD Zoning District, Associated General Plan and West Berkeley Plan Amendments, and Environmental Impact Report**
**From: City Manager**
**Recommendation:** Adopt a second reading of Ordinance No. 7,957–N.S. amending Title 23 of the Berkeley Municipal Code and the Zoning Map to establish the Manufacturing, Research & Development (M-RD) zoning district to encourage redevelopment of the former Pacific Steel Casting (PSC) site.
**First Reading Vote:** All Ayes.
**Financial Implications:** See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

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

**4. Contract: University of California, San Francisco for Encampment Resolution Funding Research Evaluation**
**From: City Manager**
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a contract and any necessary amendments with The Regents of the University of California, on behalf of its San Francisco campus, to evaluate the success of its Encampment Resolution Funding Round 3 (ERF-3) encampment resolution strategy, for a term of one year (January 1, 2025 – December 31, 2025) and in an amount not to exceed $200,000.
**Financial Implications:** See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000

**5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on April 15, 2025**
**From: City Manager**
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager’s threshold will be returned to Council for final approval.
**Financial Implications:** See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Consent Calendar

**6. Contract No. 32200086 Amendment: Crisis Services of Alameda County for Mental Health Crisis Line**
**From: City Manager**
**Recommendation:** Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 32200086 with Crisis Services of Alameda County for Mental Health Crisis Line services for a total contract not to exceed amount of $100,000 through June 30, 2028. This amendment will add $50,001, as well as extend the contract term three years.
**Financial Implications:** See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

**7. Contract No. 32200191 Amendment: Options Recovery for Substance Use Disorder Services Co-Location**
**From: City Manager**
**Recommendation:** Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 32200191 with Options Recovery for Substance Use Disorder services for a total contract not to exceed amount of $1,000,000 through June 30, 2027. This amendment will add $500,000 and two years to the contract term.
**Financial Implications:** See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

**8. Contract No. 32000177 Amendment NextRequest PRA Software**
**From: City Manager**
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000177 with NextRequest for software hosting, implementation, maintenance and related services for a Public Records Act Respons Software System, for an addtional amount not to exceed $61,098, for a total not to exceed value of $194,475, for the period commencong on July 1, 2019 through June 30, 2027.
**Financial Implications:** See report
Contact: Kevin Fong, Information Technology, (510) 981-6500

**9. Purchase Order with Multiquip Inc. for a Portable Emergency Power Generator for Berkeley Tuolumne Family Camp**
**From: City Manager**
**Recommendation:** Adopt a Resolution allowing the City to participate in Sourcewell contract bid procedures and authorize the City Manager to execute a purchase order for one Multiquip Portable Generator and associated options with Multiquip Inc. in an amount not to exceed $116,495.
**Financial Implications:** General Fund - $116,495
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

**10. Proclamation of the City of Berkeley Designating April 17 as Police Accountability Day**
**From: Police Accountability Board**
**Recommendation:** Adopt a proclamation declaring April 17 as Police Accountability Day to honor the establishment of civilian oversight of law enforcement in the City of Berkeley through the founding of the Police Review Commission and to reaffirm the City's commitment to police accountability and transparency. The proclamation encourages the Police Accountability Board and the Office of the Director of Police Accountability to collaborate with community organizations, educational institutions, and local leaders to organize events, initiatives, and activities that raise public awareness and promote engagement in police accountability. Additionally, the proclamation will reaffirm the City of Berkeley's dedication to being a national leader in police accountability, advancing policies and practices rooted in justice, equity, and community trust.
**Financial Implications:** None
Contact: Hansel Aguilar, Police Accountability Board, (510) 981-4950

## Council Consent Items

**11. Budget Referral: Ohlone Greenway Safety Improvements Project Unfunded Balance**
**From: Councilmember Kesarwani (Author)**
**Recommendation:** Refer to the fiscal year 2025-26 budget process $150,000 to fund the outstanding balance for consultant costs to finalize the design concepts to complete the Ohlone Greenway Safety Improvements Project, which has already been awarded $5.3 million in construction funds to complete the project.
**Financial Implications:** See report
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

## Council Consent Items

**12. Establish Rules and Limits When Community-Based Organizations Receive City Funding Without Procurement to Promote Transparency, Fairness, and Stewardship of Public Funds** *(Reviewed by the Budget and Finance Policy Committee)*

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

**Recommendation:** Approve the Resolution and refer to the City Manager to establish an open and transparent process for community-based organizations seeking a grant of emergency funds outside of the City's existing request for proposal (RFP) or other procurement processes. The process to be established should include the following components:

- Annual Funding Limit. Establish a maximum amount of $25,000 annually to be granted to a Berkeley-based non-profit or public organization, and a grand total of $225,000 annually to up to nine community-based organizations operating in Berkeley.
- "Declaration of Need" Form Available on a City Webpage. A Declaration of Need application form should be made available on a dedicated City webpage to ensure all community-based organizations have an equal opportunity to learn about the availability of funds, including the deadline for submitting the completed form.
- Declaration of Need Form Should Require Documentation of Financial Need and Non-Profit Status (When Appropriate). The Declaration of Need form should be short to reduce the burden on community-based organizations but should include at a minimum a request to explain the purpose/need for the funds and document the organization's financial need. In addition, the City should verify that the organization is a registered non-profit organization (if applicable).

Selection Process. The City Manager shall establish a process for selecting qualifying community-based organizations, including establishing a scoring criteria and submitting recommendations to Council as part of the annual budget development process. Pursuant to Budget and Finance Policy Committee discussion, to the extent practicable, consider awarding funds on a rolling basis to better support agencies who may be facing a fiscal emergency.

Financial Reporting Requirement for Selected Community-Based Organizations. For organizations selected to receive emergency funding of up to $25,000, the City shall enter into a contract that requests documentation at six months and 12 months to ensure that funds were used for the purpose for which they were requested. This financial reporting requirement should apply as soon as practicable to FY2024-25 budget allocations, and continue for future budget years.

*Policy Committee Recommendation: To send the item to Council with a positive recommendation.*

**Financial Implications:** See report

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

## Council Consent Items

**13. Celebración Cultural Sylvia Mendez (Spring Cultural Celebration) by the Sylvia Mendez School PTA: 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 $1,500 from the discretionary council office budget of Councilmember Ben Bartlett, to the Sylvia Mendez Elementary School PTA to host a Spring Cultural Celebration event on April 27, 2025, on campus. 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 City Councilmembers who would like to contribute.
**Financial Implications:** See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

**14. Resolution Commemorating April 24, 2025, as Berkeley Holocaust Remembrance Day**
**From: Councilmember Tregub (Author), Councilmember O'Keefe (Author), Councilmember Humbert (Author), Mayor Ishii (Co-Sponsor)**
**Recommendation:** Adopt a Resolution proclaiming April 24, 2025, as Holocaust Remembrance Day in the City of Berkeley, in memory of those who were murdered and in honor of the survivors as well as the rescuers and liberators; and committing to never forgetting the events of the Holocaust, actively working to combat antisemitism, racism, bigotry, and hatred in all forms, and promote human rights and dignity for all.
**Financial Implications:** None
Contact: Igor Tregub, Councilmember, District 4

**15. Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds to 2025 Virtual Holocaust Remembrance Day Program**
**From: Councilmember Tregub (Author), Councilmember O'Keefe (Author), Councilmember Humbert (Author), Mayor Ishii (Co-Sponsor)**
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed $500 per Councilmember from the D13 Discretionary Accounts of members of the Berkeley City Council, including $500 from Councilmember O'Keefe, $500 from Councilmember Tregub, $500 from Councilmember Humbert, and $500 from Mayor Ishii to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund.
The relinquishment of funds from Councilmembers O'Keefe, Tregub, Humbert and Mayor Ishii's respective discretionary Council Office Budgets as well as any other members of the Berkeley City Council who would like to contribute, allows the City of Berkeley to invite the community to its 22nd Annual Holocaust Remembrance Day virtual program, created by the community with City Council support.
This year's program will be held virtually on April 24, 2025.
**Financial Implications:** See report
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

## Council Consent Items

**16. Resolution in Support of California Senate Bill 42 (Umberg, Allen) California Fair Elections Act of 2026 to Amend Sections 85300 and 85320 of the Government Code, relating to the Political Reform Act of 1974.**
**From: Councilmember Tregub (Author), Councilmember Blackaby (Co-Sponsor), Councilmember Lunaparra (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**
**Recommendation:** Adopt a Resolution in support of California State Senate Bill 42 (Umberg, Allen) California Fair Elections Act of 2026 to Amend Sections 85300 and 85320 of the Government Code, relating to the Political Reform Act of 1974, which is moving through the legislature to appear on the California general election ballot on November 3rd, 2026; and distribute copies to the California Governor Gavin Newsom, Senator Jesse Arreguín, Assemblymember Buffy Wicks, California Senate President pro Tempore Mike McGuire, and California Assembly Speaker Robert Rivas to advocate for its passage.
**Financial Implications:** Staff time
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

**17. Budget Referral for Thousand Oaks Park Playground Update**
**From: Councilmember O'Keefe (Author)**
**Recommendation:** Refer $80,000 to the June budget process (FY26 Mid-Biennial Update) for the completion of a new airplane themed play structure at Thousand Oaks Park, located at 1700-1780 Tacoma Avenue.
**Financial Implications:** See report
Contact: Shoshana O'Keefe, Councilmember, District 5, (510) 981-7150

**18. Study: Sabbatical Leave for City of Berkeley Employees**
**From: Councilmember Hahn (Author)** *(Reviewed by the Budget & Finance Policy Committee)*
**Recommendation:** Refer to the City Manager study of a potential Sabbatical Leave policy for all City of Berkeley employees, modeled after the City's existing agreements with several bargaining units. Consult with labor partners and City employees to explore a variety of terms and options, and the costs/benefits of unpaid, partially paid, and paid Sabbatical Leaves. Report findings to Council, outlining possible options and their financial impacts as well as potential benefits to recruitment, morale, longevity of tenure, and wellbeing.
*Policy Committee Recommendation: Forward item to Council with a negative recommendation.*
**Financial Implications:** See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

## Council Consent Items

**19. Music in the Elmwood Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
**From: Councilmember Humbert (Author)**
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed $1,000 per Councilmember including $1,000 from Councilmember Humbert to the Elmwood Business Association for the Music in the Elmwood Festival on Sunday, May 4, 2025 with funds relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Councilmember Humbert and any other Councilmembers who would like to contribute.
**Financial Implications:** See report
Contact: Mark Humbert, Councilmember, District 8, (510) 981-7180

## Action Calendar

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

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

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

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

## Action Calendar – New Business

**20. Berkeley Police Department Texting Offences: An Independent Investigation by the Police Accountability Board** *(Reviewed by the Public Safety Policy Committee) (Item contains supplemental material)*
**From: Police Accountability Board**
**Recommendation:** The Police Accountability Board formally recommends to the City Council that it:
1. Pass an ordinance or otherwise affirm the Police Accountability Board's ability to access documents and records in furtherance of its central accountability function, consistent with Charter Amendment Section 125.
2. Adopt a robust resolution ensuring full and meaningful accountability for sworn officers—whether on-duty or off-duty—who engage in misconduct of any kind, but especially actions or expressions of racial or other types of bias.
3. Direct the City Manager to work with the Berkeley Police Department, Police Accountability Board, and the Office of the Director of Police Accountability to create a public repository to fulfill the vision of California Penal Code Section 832.7(b)(1), allowing for transparency in cases of sustained allegations of officer racism or other discriminatory conduct or expression.
4. Call on California state legislators to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code (Section 41600 – 41603).
*Policy Committee Recommendation: To send item to City Council with a negative recommendation.*
**Financial Implications:** See report
Contact: Hansel Aguilar, Police Accountability Board, (510) 981-4950

## Action Calendar – Policy Committee Track Items

**21. Referral to City Attorney for Sanctuary City Ordinance**
**From: Mayor Ishii (Author), Councilmember Blackaby (Co-Sponsor), Councilmember Lunaparra (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**
**Recommendation:** Referral to the City Attorney to return to City Council in May with an analysis and recommendation to codify Berkeley's Sanctuary policies and protections through a city ordinance.
**Financial Implications:** None
Contact: Adena Ishii, Mayor, (510) 981-7100

## Action Calendar – Policy Committee Track Items

**22. Alternative Housing Options for People Experiencing Homelessness**
**From: Councilmember O'Keefe (Author), Mayor Ishii (Co-Sponsor), Councilmember Blackaby (Co-Sponsor), Councilmember Lunaparra (Co-Sponsor)**
**Recommendation:** Refer to the City Manager a request for staff to identify a list of potential locations of City properties (such as parks, parking lots, buildings, and other sites) and private properties (to be leased or acquired) – for the purpose of establishing alternative housing options including but not limited to indoor/outdoor camping areas, safe RV and car park zones, and/or congregate or non-congregate shelters for people experiencing homelessness based on the model used at Grayson Street.
**Financial Implications:** Staff time
Contact: Shoshana O'Keefe, Councilmember, District 5, (510) 981-7150

**23. Resolution: Affirming Support for Berkeley Police Department, Police Accountability Board, and Office of the Director of Police Accountability in Response to Downtown Task Force Texting Offenses Investigation**
**From: Councilmember Blackaby (Author)**
**Recommendation:** Adopt a Resolution affirming our community's support for the Berkeley Police Department (BPD) and acknowledging the work of the Police Accountability Board (PAB) & the Office of the Director of Police Accountability (ODPA) in investigating BPD's Downtown Task Force texting offenses, ultimately making recommendations to increase trust, transparency, and accountability. Additionally, the Resolution condemns any and all racism and misconduct, affirms the City Council's opposition to arrest quotas, and asks the California Legislature to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code.
**Financial Implications:** None
Contact: Brent Blackaby, Councilmember, District 6, (510) 981-7160

## Information Reports

**24. Age-Friendly Berkeley Update**
**From: City Manager**
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

**25. Response to Council Referral: Adopt a Citywide "Care First, Jails Last" Policy**
**From: City Manager**
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

**26. Climate Action Plan and Resilience Update**
**From: City Manager**
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Information Reports

**27. Notice of Decision: 21 Mosswood Road/#LMIN2024-0007**
**From: City Manager**
Contact: Jordan Klein, Planning and Development, (510) 981-7400

**28. Notice of Decision: 2138 Cedar Street/#LMSAP2024-0008**
**From: City Manager**
Contact: Jordan Klein, Planning and Development, (510) 981-7400

**29. Notice of Decision: 2231 McKinley Avenue/#LMIN2024-0005**
**From: City Manager**
Contact: Jordan Klein, Planning and Development, (510) 981-7400

**30. Notice of Decision: 2425 Durant Avenue/#LMIN2024-0008**
**From: City Manager**
Contact: Jordan Klein, Planning and Development, (510) 981-7400

**31. Environment and Climate Commission 2025 Work Plan**
**From: Environment and Climate Commission**
Contact: Sarah Moore, Commission Secretary, (510) 981-7400

**32. Police Accountability Board Recommendation: Former Board Member Recognition**
**From: Police Accountability Board**
Contact: Hansel Aguilar, Police Accountability Board, (510) 981-4950

**33. City Auditor's Office 2024 Peer Review Results**
**From: Auditor**
Contact: Jenny Wong, Auditor, (510) 981-6750

## Public Comment – Items Not Listed on the Agenda

## Adjournment

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

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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:
https://berkeleyca.gov/your-government/city-council/city-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.

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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# 02a.10

CONSENT CALENDAR

April 15, 2025

| | |
|---|---|
| To: | Honorable Mayor and Members of the City Council |
| From: | Police Accountability Board (PAB) |
| Submitted by: | Hansel A. Aguilar, Director of Police Accountability (DPA) & Secretary of the Police Accountability Board (PAB) |
| Subject | Proclamation of the City of Berkeley Designating April 17 as Police Accountability Day |

## RECOMMENDATION

Adopt a proclamation declaring April 17 as Police Accountability Day to honor the establishment of civilian oversight of law enforcement in the City of Berkeley through the founding of the Police Review Commission and to reaffirm the City's commitment to police accountability and transparency. The proclamation encourages the Police Accountability Board and the Office of the Director of Police Accountability to collaborate with community organizations, educational institutions, and local leaders to organize events, initiatives, and activities that raise public awareness and promote engagement in police accountability. Additionally, the proclamation will reaffirm the City of Berkeley's dedication to being a national leader in police accountability, advancing policies and practices rooted in justice, equity, and community trust.

## SUMMARY

This report provides formal reasons why April 17 should be designated as Police Accountability Day.

Recommendations include, but are not limited to:

- To provide an annual opportunity to reflect on Berkeley's leadership in police oversight.
- To honor the contributions of the Police Review Commission, Police Accountability Board, and the Office of the Director of Police Accountability.
- To engage the community in discussions and actions that strengthen trust and accountability in policing.

- To underscore the importance of ongoing efforts to advance equitable and just policing practices.
- To foster stronger relationships between law enforcement and the communities they serve.
- To commemorate the founding of the Police Review Commission.
- To celebrate the City's continued commitment to police accountability and transparency.

## FISCAL IMPACTS OF RECOMMENDATION

There are no identifiable fiscal impacts associated with these recommendations.

## CURRENT SITUATION AND ITS EFFECTS

Currently, there is no day that commemorates the founding of the Police Review Commission.

## BACKGROUND

The City of Berkeley has a longstanding tradition of leadership in civilian oversight of law enforcement, exemplified by the establishment of the Police Review Commission (PRC) on April 17, 1973, through Ordinance No. 4644-N.S. The founding of the PRC was a groundbreaking step towards transparency, accountability, and community trust in policing practices, setting a national example for civilian oversight.

In November 2020, Berkeley voters approved Measure II, which replaced the PRC with the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) to strengthen oversight powers, modernize practices, and reaffirm the City's commitment to equitable law enforcement oversight. Measure II represents a significant evolution in the City's approach to police accountability, ensuring that the principles of justice, transparency, and fairness remain at the forefront of law enforcement practices. Civilian oversight of law enforcement plays a critical role in promoting procedural justice, protecting civil rights, and enhancing public safety, both locally and across the nation.

At its March 5, 2025, regular meeting, the PAB unanimously approved a resolution recommending that the City Council designate April 17 as "Police Accountability Day".[1] Designating this day would provide an annual opportunity to reflect on Berkeley's leadership in police oversight, honor the contributions of the PRC, PAB, and ODPA, and engage the community in discussions and actions that strengthen trust and accountability in policing. Recognizing Police Accountability Day underscores the ongoing commitment to advancing equitable and just policing practices while fostering stronger relationships between law enforcement and the communities they serve.

[1] March 5, 2025 PAB Regular Meeting Recording (relevant discussion at [54:30:00-58:39:00]) : https://youtu.be/X-c0A5Uc--0?si=S91NDBIo4NIgTL3v

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

## RATIONALE FOR RECOMMENDATION

The PAB presents these recommendations for City Council, aimed honoring the contributions of the PRC, PAB, and ODPA.

## CONTACT PERSON

Hansel A. Aguilar, Director,
Office of the Director of Police Accountability (510) 981-4950

Attachments:

1. PAB Resolution No. 2025-0010
2. Proclamation of the City Of Berkeley Designating April 17 As Police Accountability Day

## RESOLUTION NO. 2025-0010

## RESOLUTION CALLING FOR THE DESIGNATION OF APRIL 17 AS POLICE ACCOUNTABILITY DAY

**WHEREAS,** on April 17, 1973, the City of Berkeley established the Police Review Commission (PRC) through Ordinance No. 4644-N.S., becoming a pioneer in civilian oversight of law enforcement; and

**WHEREAS,** the founding of the PRC marked a historic commitment by the City of Berkeley to ensure transparency, accountability, and community trust in policing practices; and

**WHEREAS,** in November 2020, Berkeley voters overwhelmingly approved Measure II, which replaced the PRC with the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) to enhance oversight powers, increase transparency, and strengthen the City's commitment to police accountability; and

**WHEREAS,** Measure II established the PAB and ODPA as integral components of a modern and robust civilian oversight framework, ensuring continued dedication to the principles of fairness, equity, and justice in law enforcement oversight; and

**WHEREAS,** civilian oversight of law enforcement continues to play an essential role in promoting procedural justice, protecting civil rights, and enhancing public safety; and

**WHEREAS,** recognizing April 17 as Police Accountability Day would serve as an opportunity for the community to reflect on the progress made in police accountability, honor the work of civilian oversight bodies, and reaffirm the City's commitment to equitable and just law enforcement practices; and

**WHEREAS,** the designation of Police Accountability Day would also underscore the importance of police accountability as a cornerstone of democracy, community trust, and public safety both locally and nationwide.

**NOW, THEREFORE, BE IT RESOLVED,** that the Police Accountability Board and the Office of the Director of Police Accountability urge the Berkeley City Council to designate April 17 as Police Accountability Day; and

**BE IT FURTHER RESOLVED,** that this day shall be commemorated annually to highlight the importance of civilian oversight, community engagement, and the continuous pursuit of fairness and justice in law enforcement; and

**BE IT FURTHER RESOLVED,** that the PAB and ODPA will collaborate with community organizations, educational institutions, and local leaders to host events, discussions, and activities to educate and engage the public on police accountability and the legacy of the Police Review Commission; and

**BE IT FINALLY RESOLVED,** that the City of Berkeley reaffirms its commitment to being a national leader in police accountability and to advancing policies and practices that uphold the principles of justice, transparency, and community trust.

**Adopted on:** March 5, 2025

## RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain |
|---|---|---|---|
| Calavita | x | | |
| Cayetano | x | | |
| Leftwich | x | | |
| Williams | x | | |
| Wilson | x | | |

**Total:** 5 Ayes, 0 No

## CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

**Joshua Cayetano,**
Chair of the Police Accountability Board

Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

**Hansel A. Aguilar,**
Director of Police Accountability &
Secretary to the Police Accountability Board

Date

**PROCLAMATION OF THE CITY OF BERKELEY DESIGNATING APRIL 17 AS POLICE ACCOUNTABILITY DAY**

**WHEREAS**, the City of Berkeley has a longstanding tradition of leadership in civilian oversight of law enforcement, exemplified by the establishment of the Police Review Commission (PRC) on April 17, 1973, through Ordinance No. 4644-N.S.; and

**WHEREAS**, the founding of the PRC was a groundbreaking step toward transparency, accountability, and community trust in policing practices, setting a national example for civilian oversight; and

**WHEREAS**, in November 2020, Berkeley voters approved Measure II, which replaced the PRC with the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) to strengthen oversight powers, modernize practices, and reaffirm the City's commitment to equitable law enforcement oversight; and

**WHEREAS**, Measure II represents a significant evolution in the City's approach to police accountability, ensuring that the principles of justice, transparency, and fairness remain at the forefront of law enforcement practices; and

**WHEREAS**, civilian oversight of law enforcement plays a critical role in promoting procedural justice, protecting civil rights, and enhancing public safety, both locally and across the nation; and

**WHEREAS**, designating April 17 as Police Accountability Day provides an annual opportunity to reflect on Berkeley's leadership in police oversight, honor the contributions of the PRC, PAB, and ODPA, and engage the community in discussions and actions that strengthen trust and accountability in policing; and

**WHEREAS**, the recognition of Police Accountability Day underscores the importance of ongoing efforts to advance equitable and just policing practices, fostering stronger relationships between law enforcement and the communities they serve;

**NOW, THEREFORE, BE IT PROCLAIMED**, that the City of Berkeley hereby designates April 17 as Police Accountability Day to commemorate the founding of the Police Review Commission and to celebrate the City's continued commitment to police accountability and transparency; and

**BE IT FURTHER PROCLAIMED**, that the City of Berkeley encourages the Police Accountability Board and the Office of the Director of Police Accountability to collaborate with community organizations, educational institutions, and local leaders to host events, educational programs, and activities that promote public awareness and engagement on issues of police accountability; and

**BE IT FINALLY PROCLAIMED**, that the City of Berkeley reaffirms its dedication to being a national leader in police accountability, advancing policies and practices that reflect the values of justice, equity, and community trust.

| | | |
|---|---|---|
| Mayor Adena Ishii | Councilmember Rashi Kesarwani | Councilmember Terry Taplin |
| Councilmember Ben Bartlett | Councilmember Igor Tregub | Councilmember Shoshana O'Keefe |
| Councilmember Brent Blackaby | Councilmember Cecilia Lunaparra | Councilmember Mark Humbert |

**02a.11**

Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR
April 15, 2025

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Budget Referral: Ohlone Greenway Safety Improvements Project Unfunded Balance

## RECOMMENDATION

Refer to the fiscal year 2025-26 budget process $150,000 to fund the outstanding balance for consultant costs to finalize the design concepts to complete the Ohlone Greenway Safety Improvements Project, which has already been awarded $5.3 million in construction funds to complete the project.

## CURRENT SITUATION AND ITS EFFECTS

***Ohlone Greenway Safety Improvements Project to Enhance Pedestrian and Bicycle Safety by Improving Street Crossings, Widening Path, and Enhancing Lighting . . .*** The Ohlone Greenway is a high volume shared-use pathway for pedestrians and cyclists that offers an off-street connection between the North Berkeley and El Cerrito Plaza BART stations. The city has been planning improvements along part of the Ohlone Greenway from Virginia Gardens (southern end) to the Santa Fe Avenue intersection (northern end) to better accommodate the needs of all users and improve safety particularly at roadway intersections. Planned upgrades will include:

- Improving safety of pathway/roadway intersections, including more clear sightlines, at seven intersections–Virginia Gardens, Cedar Street, Rose Street, Hopkins Street, Peralta Avenue, Gilman Street, and Santa Fe Avenue.
- Widening the pathway to a minimum of 12 feet where feasible to better separate users of different speeds (e.g., pedestrians and bicyclists).
- Improved connection at pathway gap on Peralta Avenue, including wayfinding (signage) and traffic calming features.

- Enhanced pathway lighting to improve safety and security of pathway users at intersection approaches, benches, and other locations where potential security issues exist.
- Landscaping to trim back and/or remove vegetation to increase effectiveness of lighting and to improve visibility and security.

***. . . Yet a Relatively Small Budget Shortfall Keeps Ohlone Safety Enhancements from Moving Forward.*** Despite receiving grants from various county and BART funds, the project's budget still falls short of covering all design costs due to additional community outreach efforts to ensure broad participation and greater input and the re-evaluation of some design elements as a result of internal and external stakeholder coordination. These technical elements include adjustments to the intersection treatments at Gilman/Curtis, updates to the Peralta Avenue connection, and adjustments to electrical elements to comply with latest practices.

**Exhibit 1: Planning Project Area for Ohlone Safety Improvements Project**

Source: Ohlone Greenway Safety Improvements Project - Project Information Sheet, Dec. 8, 2023[1]

## BACKGROUND

[1] Ohlone Greenway Safety Improvements Project - Project Information Sheet, Dec. 8, 2023: https://berkeleyca.gov/sites/default/files/documents/20231208-Project%20Information%20Sheet_rev2.1.pdf

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E-Mail: *Rkesarwani@cityofberkeley.info*

***Several Berkeley Plans Identify the Ohlone Greenway as a Key High-Volume Pathway in Need of Safety Improvements***. The Ohlone Greenway Safety Improvements Project is designed to implement Berkeley's 2017 Bicycle Plan Tier 1 priority recommendations for pathway and intersection improvements to the Ohlone Greenway as this pathway is highly used by pedestrians and cyclists.[2] The project also addresses the City's 2020 Vision Zero Action Plan as the pathway crosses two high-injury segments at Cedar and Rose Streets and recommends improvements identified in that plan.[3] The proposed pathway improvements are also included in the 2016 Berkeley Strategic Transportation (BeST) Plan, which designates the improvement project as a priority within the city's multimodal program.[4]

***Pathway Widening Is Among Project Safety Improvements.***The portion of the pathway within the project area is considered a two-way shared-use pathway with all users sharing the same path that has no separate spaces for cyclists or pedestrians. Berkeley's 2017 Bicycle Plan recommends a shared pathway with a minimum total width of 12 feet for this project where feasible.[5] Currently, the width of the pathway varies by segment. The current widths of the segments as well as the proposed widths are shown in Exhibit 2 below.

**Exhibit 2: Current and Proposed Widths by Pathway Segment**

| Pathway Segment | Current Width | Proposed Width |
|---|---|---|
| Virginia Gardens to Cedar St. | 10' | 14' |
| Cedar Rose Park | 8' | 8' |
| Rose St. to Hopkins St. | 11' | 12' |
| Peralta St. to Gilman St. | 10' | 12' |
| Gilman St. to Santa Fe Ave.* | 12' | 12' |

Source: Ohlone Greenway Safety Improvements Project - Project Information Sheet, Dec. 8, 2023[6]

Save a 200-foot stretch of the pathway within Cedar Rose Park, the planned widening for the rest of the pathway would achieve the recommended 12 feet width for a standard two-way shared-use pathway. The additional width will allow for multiple users in both directions to travel more comfortably.

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[2] Berkeley's 2017 Bicycle Plan Chapter 5: Proposed Bikeway Network https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017_Ch5_ProposedBikewayNetwork.pdf, pp 5-28 - 5-32.

[3] Berkeley's Vision Zero Action Plan: https://berkeleyca.gov/sites/default/files/2022-02/Berkeley-Vision-Zero-Action-Plan.pdf, p. 17

[4] Berkeley Strategic Transportation Plan Chapter 3: Achieving the Vision: https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Strategic-Transportation-Plan-Chapter3.pdfp. 41

[5] Berkeley's 2017 Bicycle Plan Chapter 5: Proposed Bikeway Network https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017_Ch5_ProposedBikewayNetwork.pdf, p. 5-28

[6] Ohlone Greenway Safety Improvements Project Information Sheet, Dec. 8, 2023: https://berkeleyca.gov/sites/default/files/documents/20231208-Project%20Information%20Sheet_rev2.1.pdf

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E-Mail: *Rkesarwani@cityofberkeley.info*

***Improved Intersection Crossings are Among Project Safety Improvements.***
The crossings where the pathway intersects with Cedar, Rose and Gilman Streets are all identified as high injury corridors according to Bekeley's Vision Zero Action Plan.[7] Data from reported collisions over the last ten years (2015-2024) for each of the Ohlone Greenway crossings totaled six pedestrian-vehicle injuries, and seven injuries of bicyclists. Planned improvements for these crossings as well as the crossings for the remaining intersections include the following improvements[8]:

- Cedar: flashing beacons, raised crosswalk, concrete median, pavement markings
- Rose: bulbouts, raised crosswalk, pavement markings
- Hopkins: raised crosswalk, concrete median, pavement markings
- Peralta: raised crosswalk, pavement markings
- Gilman at Curtis: pavement markings
- Santa Fe: raised crosswalk, pavement crossings

## FISCAL IMPACT

The Public Works Department has provided an estimate of $150,000 that would cover the remaining costs needed to fund the consultant to complete the designs for this project.

The total costs for this project, including design and construction, is estimated to be approximately $5.3 million. The vast majority of the Ohlone Greenway Safety Improvement Project has already been funded by several different county and BART funds:

- Alameda County Vehicle Registration Fee Funds (fund 307): $1,271,000
- Alameda County Measure BB Bike and Pedestrian discretionary funds (Fund 135): $245,319
- Alameda County Measure BB Streets and Roads discretionary funds (Fund 134): $458,000
- Alameda County Measure B Bike and Pedestrian discretionary funds (Fund 131): $225,978
- Safe Route to BART funds (Fund 307): $3,000,000

The remaining funds requested in this budget referral would constitute the only City funds being used for this project.

## RATIONALE FOR RECOMMENDATION

The Ohlone Greenway is a high volume shared-use pathway for pedestrians and cyclists that offers an off-street connection between the North Berkeley and El Cerrito Plaza BART stations. Various segments of the pathway are in great need of

[7] Berkeley Vision Zero Action Plan: https://berkeleyca.gov/sites/default/files/2022-02/Berkeley-Vision-Zero-Action-Plan.pdf, p. 17
[8] The Final Conceptual Plan for the Ohlone Greenway Safety Improvements Project: https://berkeleyca.gov/sites/default/files/documents/20231115-Final%20Concepts.pdf

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safety improvements to enhance user experience and promote greater use. Currently, the project's budget falls short of the necessary funds. Funding of this budget referral would allow this project to move forward into the construction phase.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

The Ohlone Greenway Safety Improvements Project will create a safer and more seamless low-stress connection for people accessing the North Berkeley BART Station using alternative modes of transportation including cycling and walking. This supports the city's transit goals of reducing vehicle miles traveled and greenhouse gas emissions.

**CONTACT**

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

Attachments: Final Conceptual Plan for the Ohlone Greenway Safety Improvements Project, November 15, 2023

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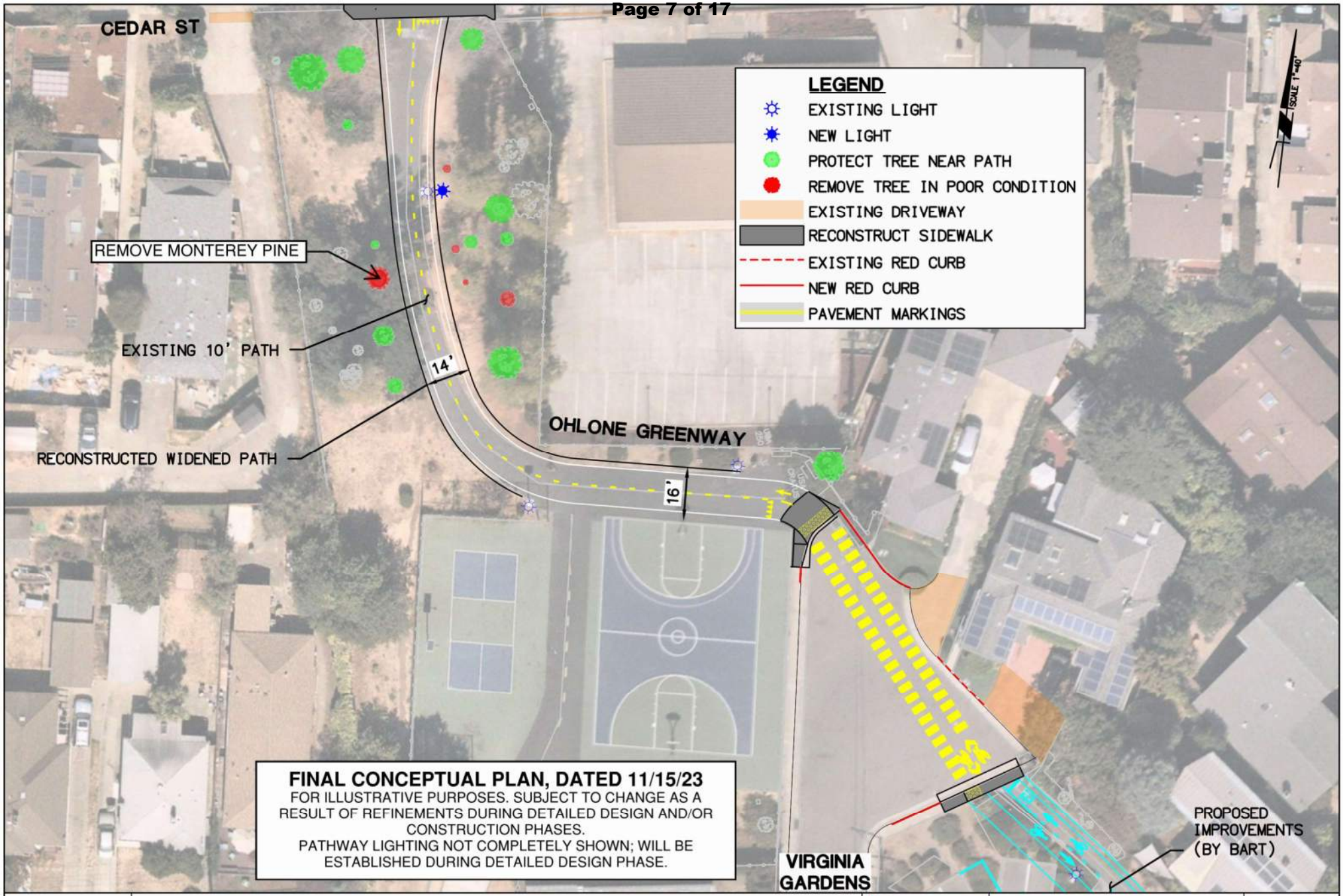
E-Mail: *Rkesarwani@cityofberkeley.info*

**FINAL CONCEPTUAL PLAN, DATED 11/15/23**
FOR ILLUSTRATIVE PURPOSES. SUBJECT TO CHANGE AS A RESULT OF REFINEMENTS DURING DETAILED DESIGN AND/OR CONSTRUCTION PHASES.
PATHWAY LIGHTING NOT COMPLETELY SHOWN; WILL BE ESTABLISHED DURING DETAILED DESIGN PHASE.

CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**

**SITE PLAN**

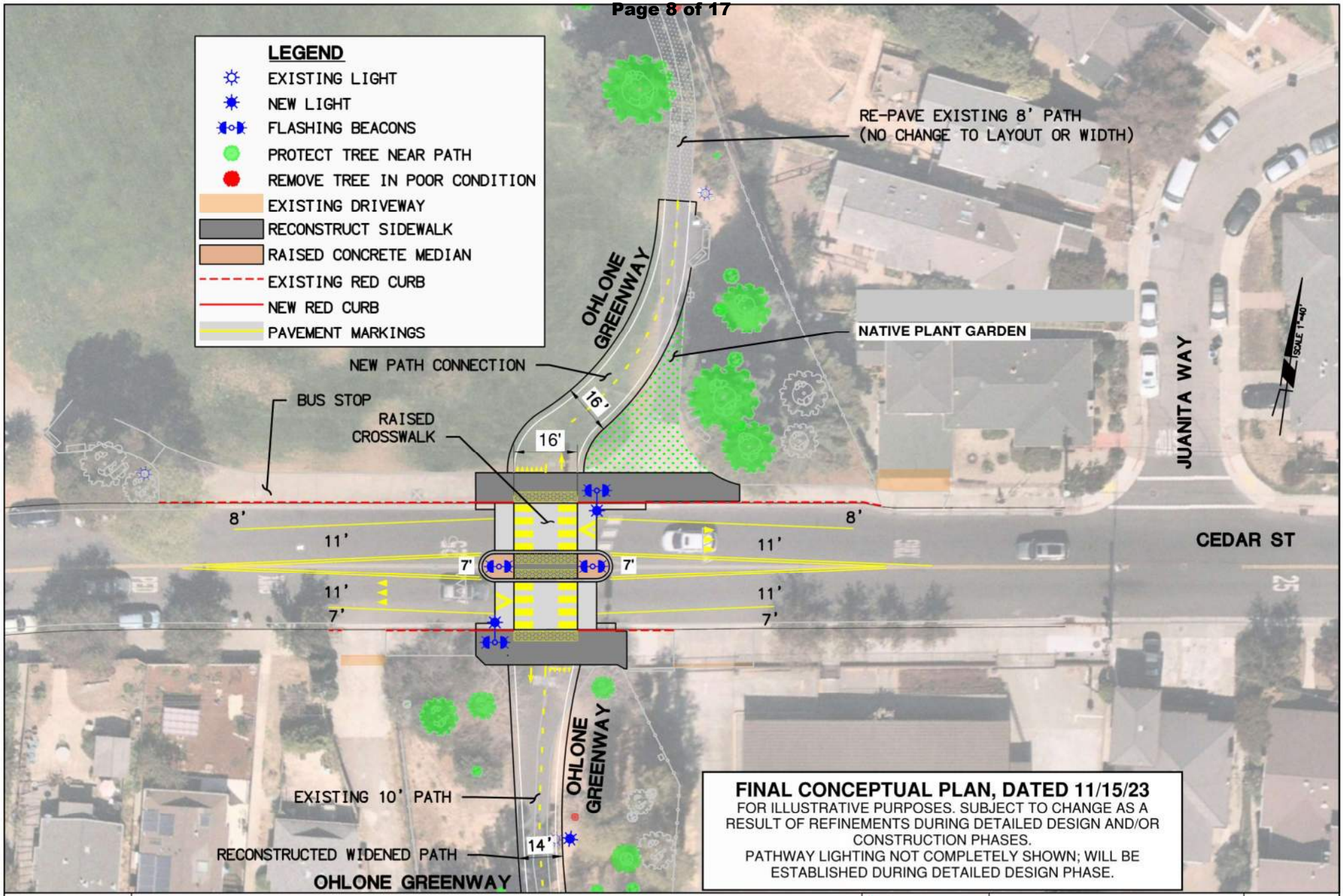



CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**
**VIRGINIA GARDENS**

VG

SHEET 1 OF 11




**FINAL CONCEPTUAL PLAN, DATED 11/15/23**
FOR ILLUSTRATIVE PURPOSES. SUBJECT TO CHANGE AS A RESULT OF REFINEMENTS DURING DETAILED DESIGN AND/OR CONSTRUCTION PHASES.
PATHWAY LIGHTING NOT COMPLETELY SHOWN; WILL BE ESTABLISHED DURING DETAILED DESIGN PHASE.

CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**
**CEDAR STEET**

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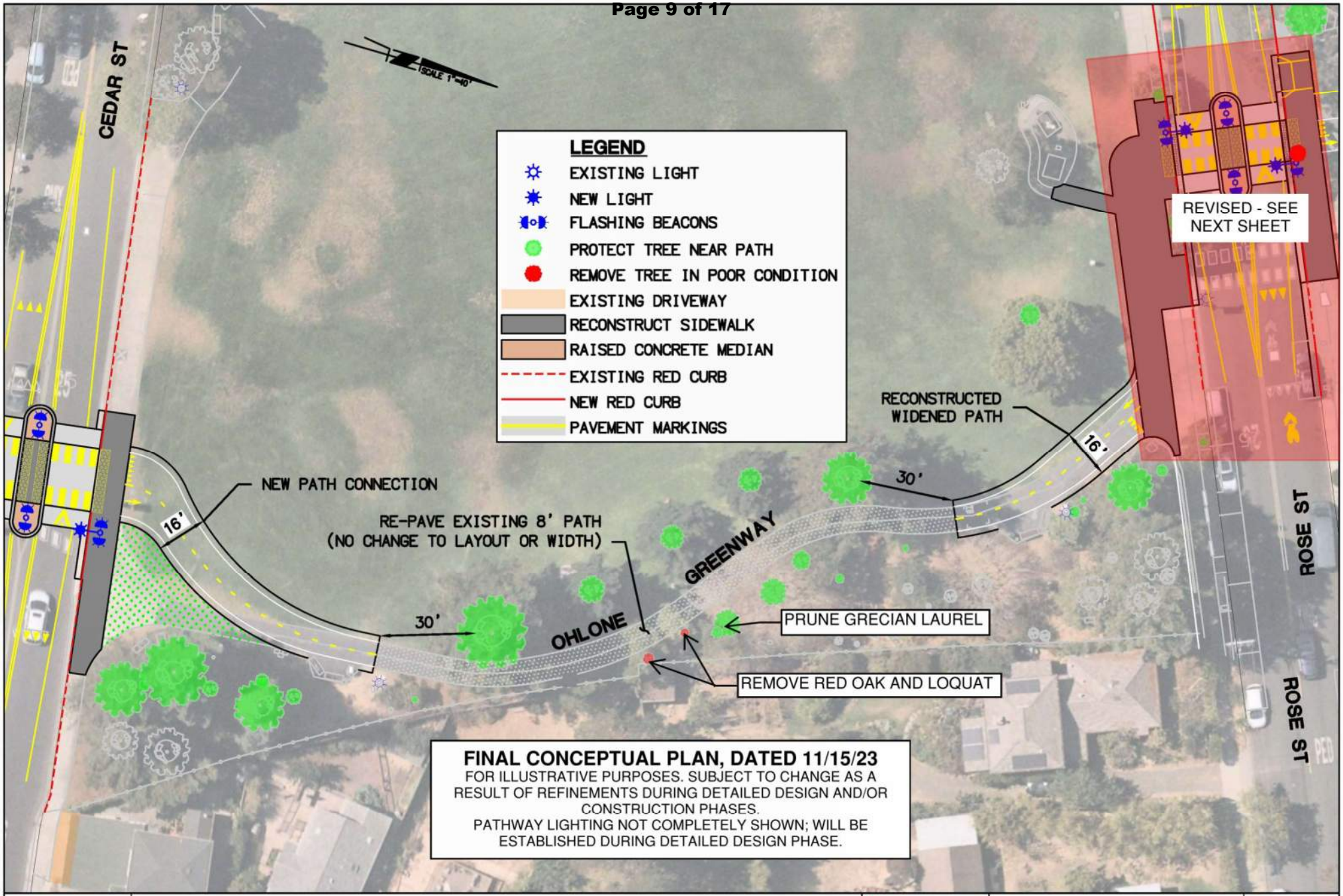
SHEET 2 OF 11



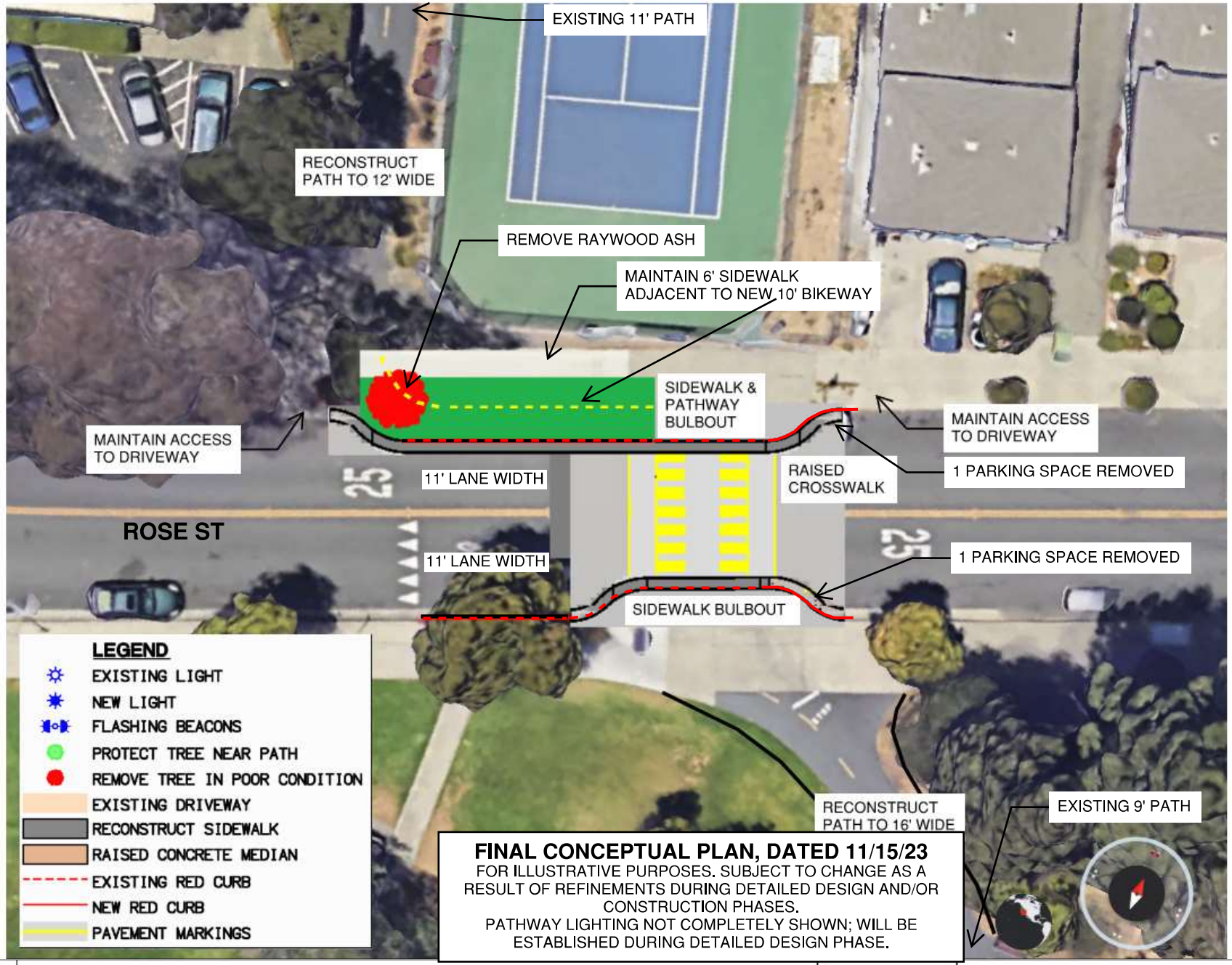

CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**
**OHLONE GREENWAY - FROM CEDAR STREET TO ROSE STREET**

CITY OF BERKELEY

**OG2**

SHEET 3 OF 11




**FINAL CONCEPTUAL PLAN, DATED 11/15/23**
FOR ILLUSTRATIVE PURPOSES. SUBJECT TO CHANGE AS A RESULT OF REFINEMENTS DURING DETAILED DESIGN AND/OR CONSTRUCTION PHASES.
PATHWAY LIGHTING NOT COMPLETELY SHOWN; WILL BE ESTABLISHED DURING DETAILED DESIGN PHASE.

CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**
**ROSE STREET**

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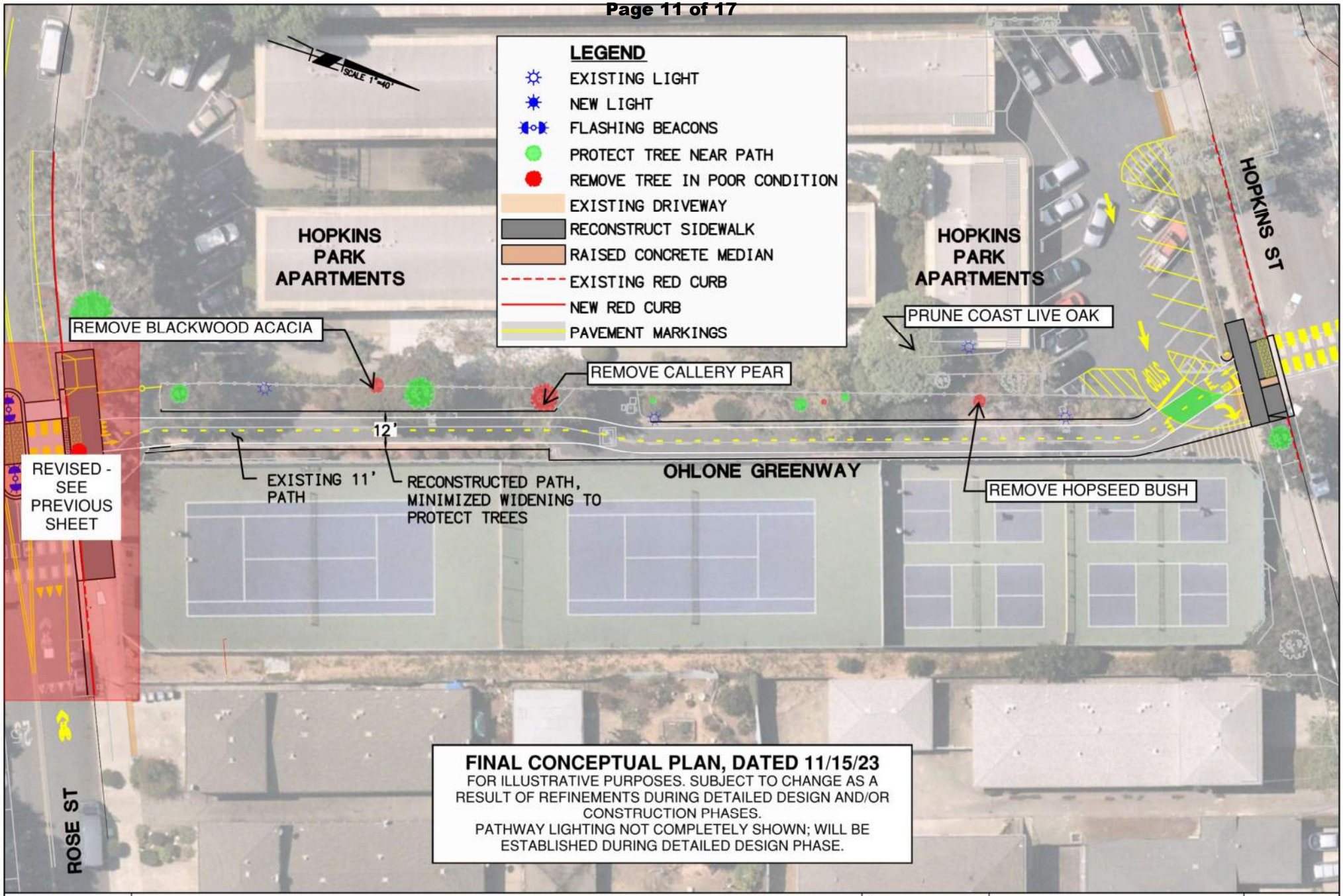
SHEET 4



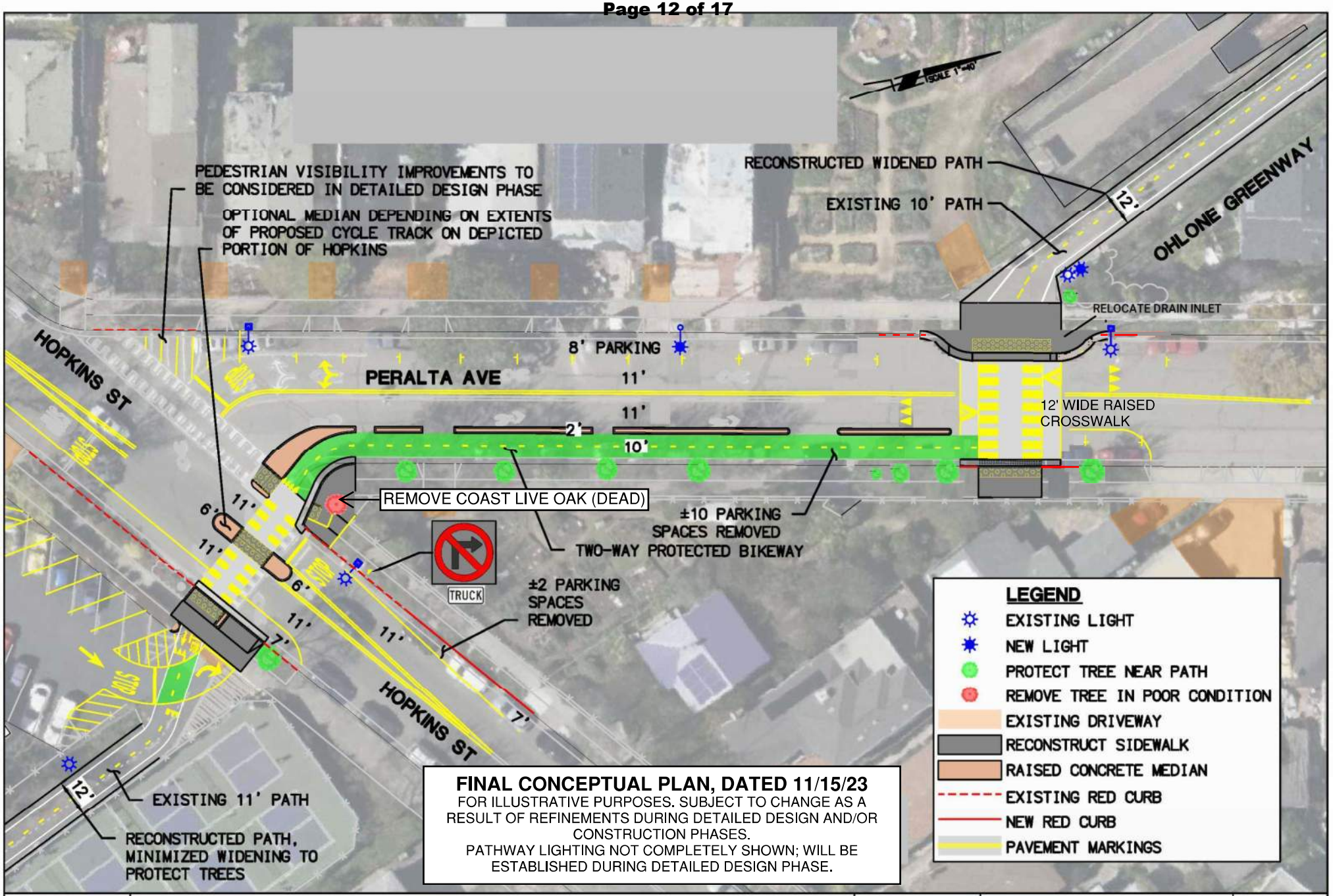

CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**
**OHLONE GREENWAY - FROM ROSE STREET TO HOPKINS STREET**

CITY OF BERKELEY

OG3

SHEET 5 OF 11

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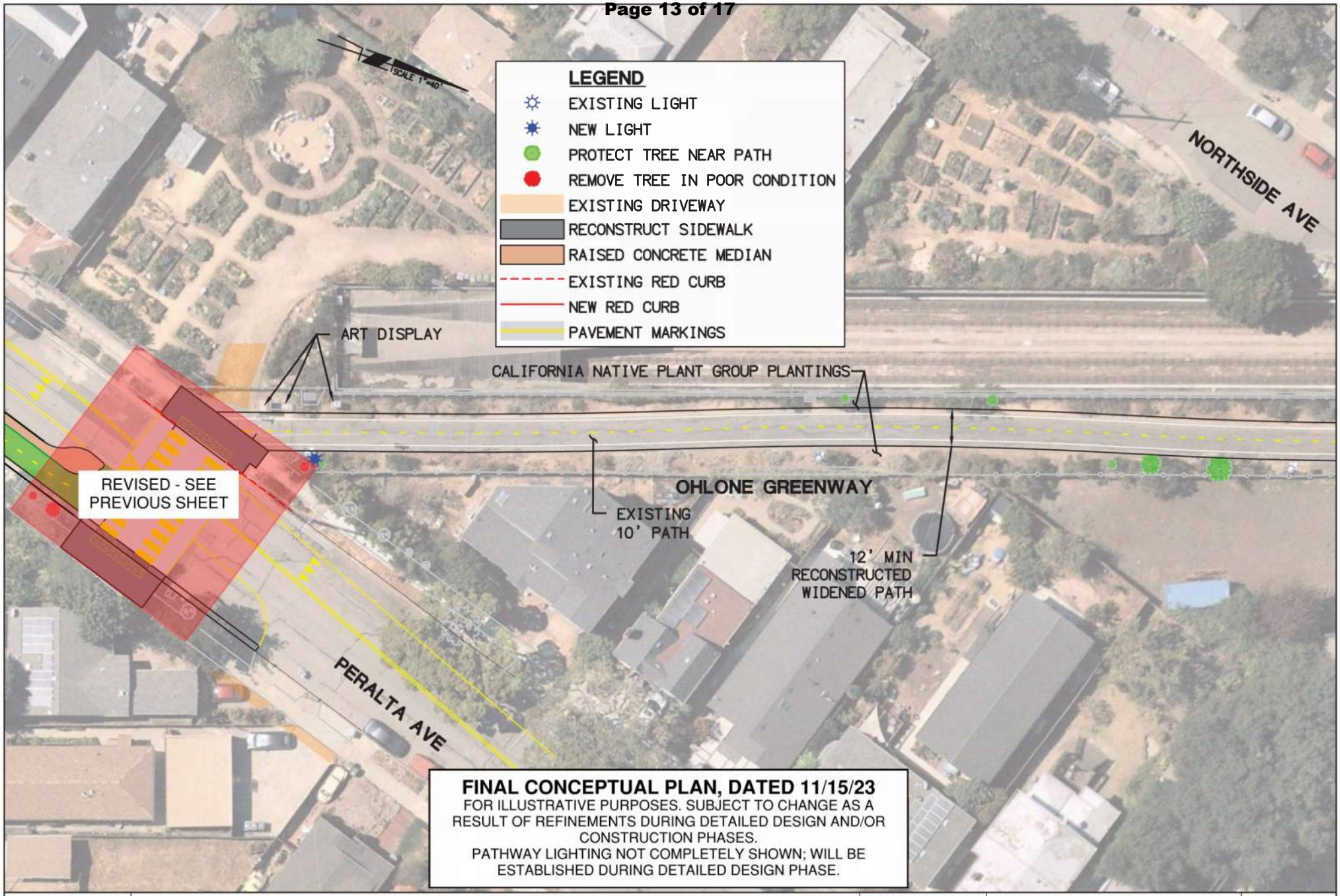
CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**
**PERALTA AVENUE AND HOPKINS STREET**

**CONCEPT 3**

SHEET 6



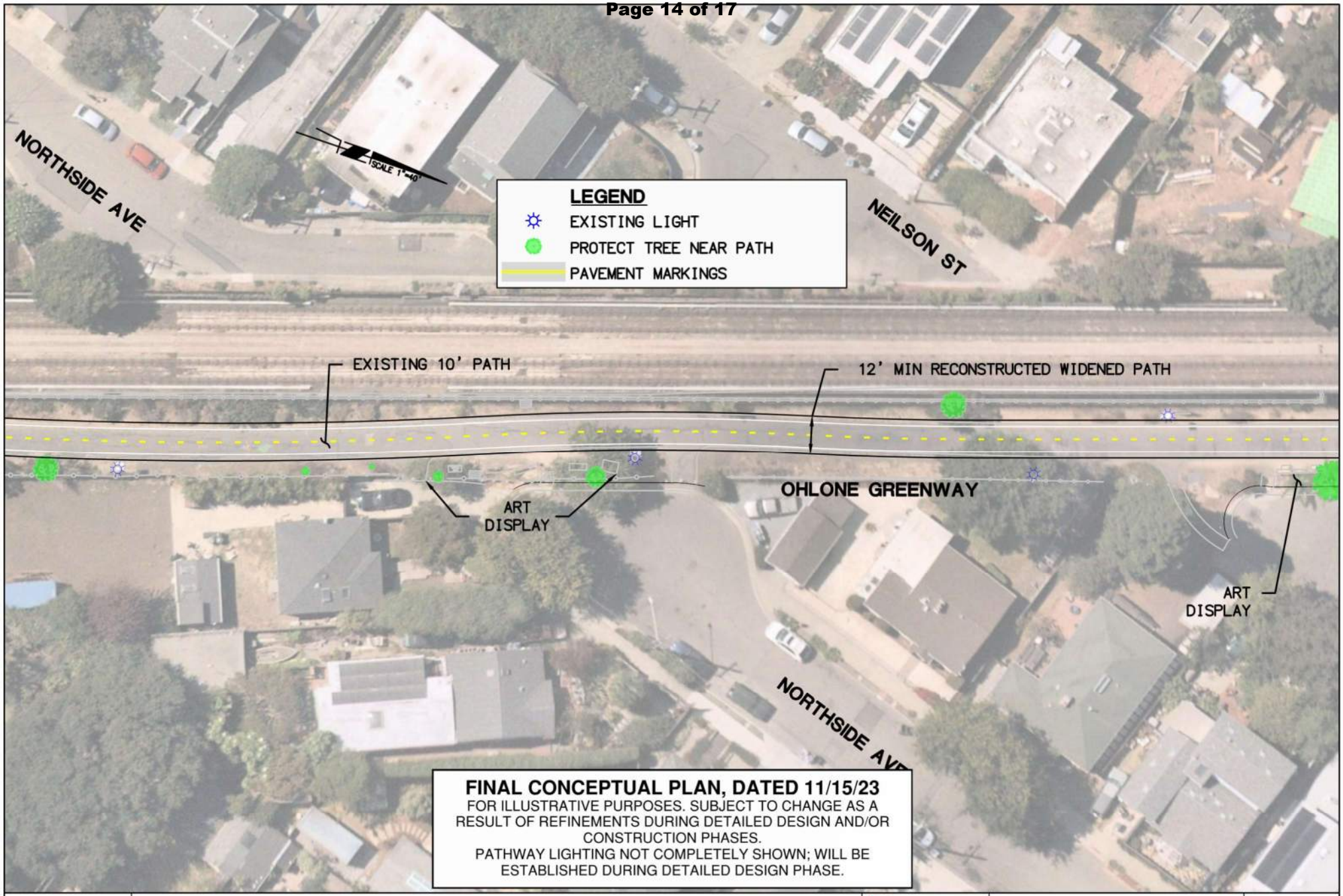

CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**
**OHLONE GREENWAY - FROM PERALTA AVENUE TO GILMAN AVENUE**

CITY OF BERKELEY

OG4

SHEET 7 OF 11

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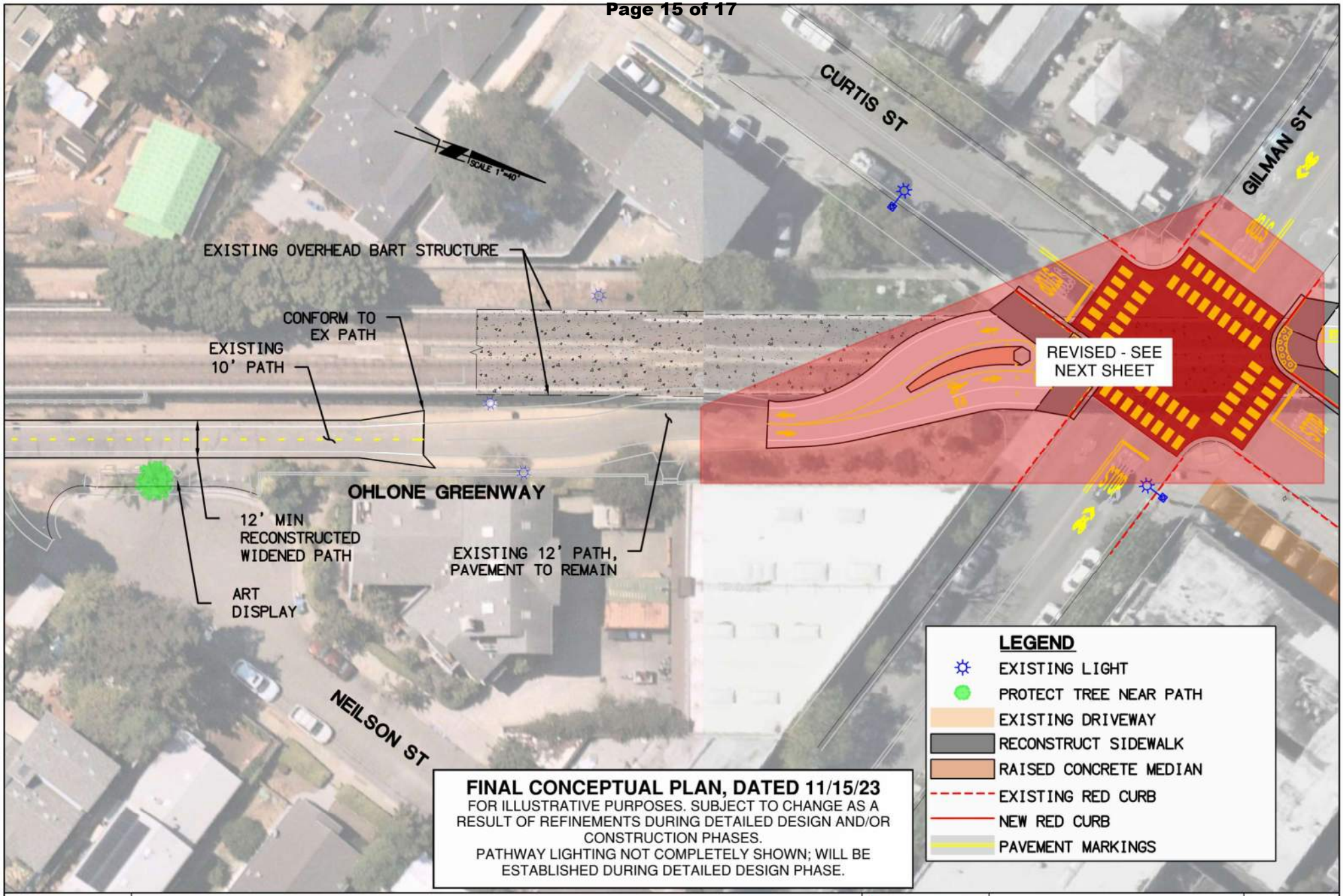
CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**
**OHLONE GREENWAY - FROM PERALTA AVENUE TO GILMAN AVENUE**

**OG5**

SHEET 8 OF 11

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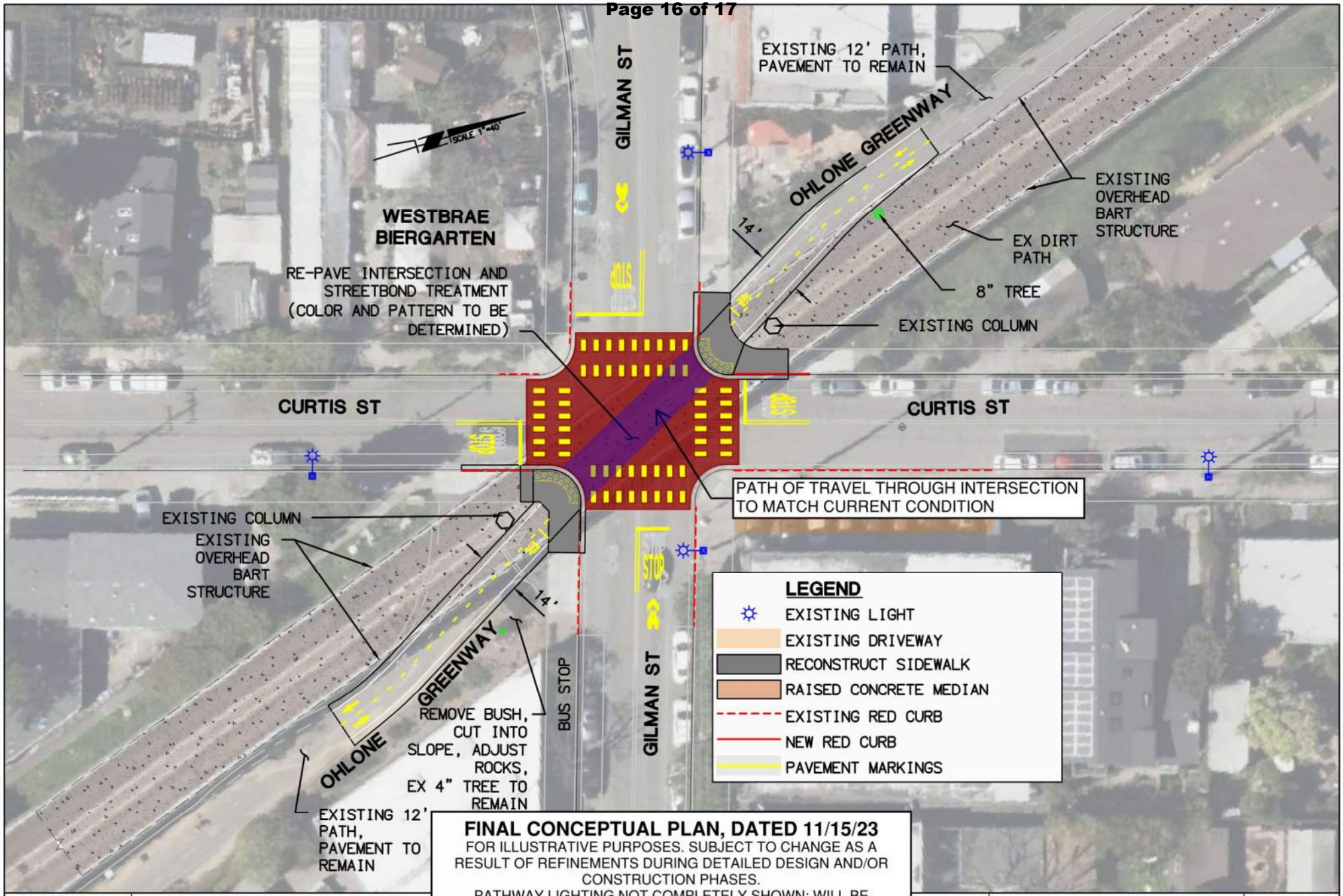
CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**
**OHLONE GREENWAY - FROM PERALTA AVENUE TO GILMAN AVENUE**

OG6

SHEET 9 OF 11

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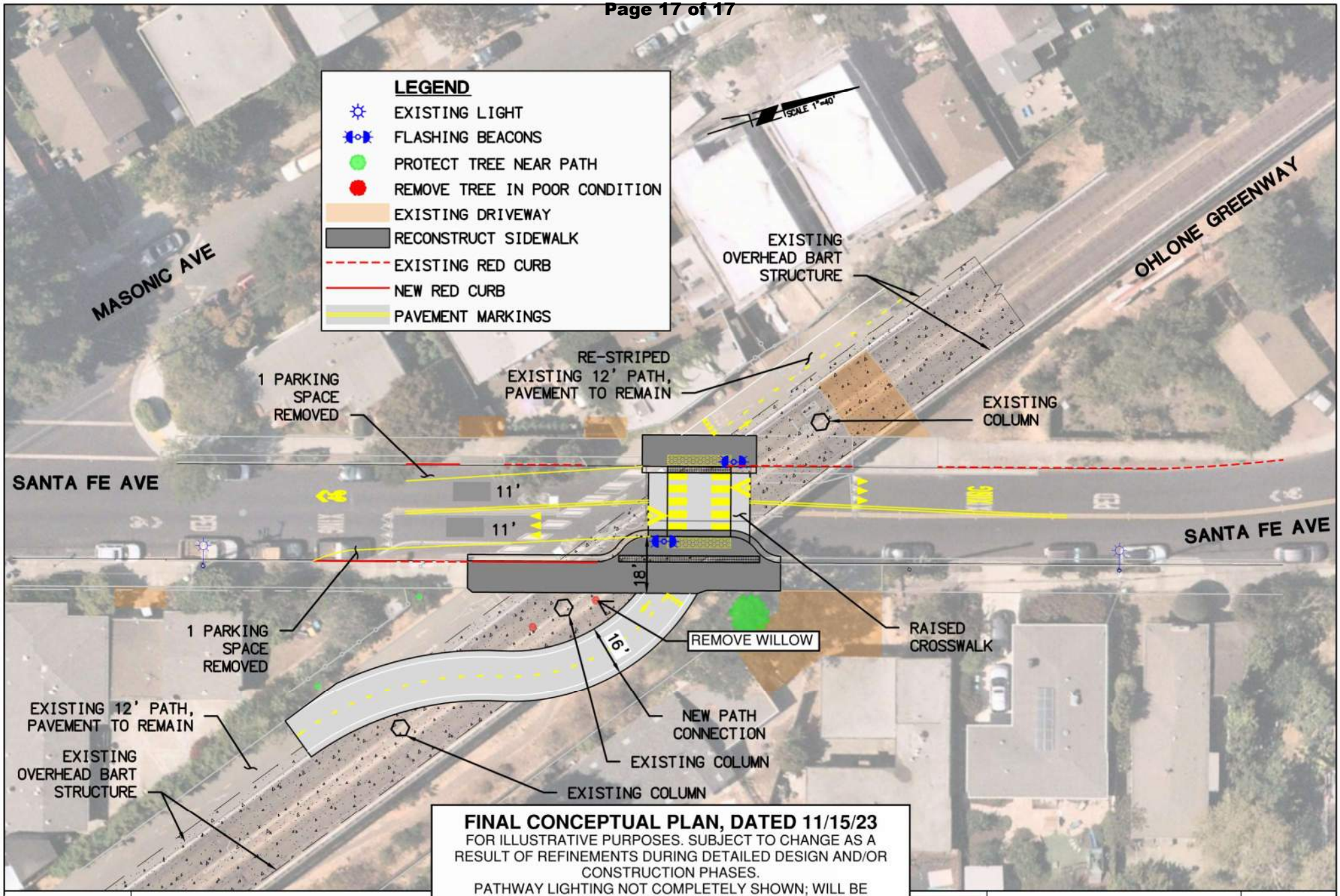
**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**
**GILMAN STREET AND CURTIS STREET**

CITY OF BERKELEY

G

SHEET 10 OF 11

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**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**
**SANTA FE AVENUE**

CITY OF BERKELEY

SF-2

SHEET 11 OF 11

**02a.12**

Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR
April 15, 2025

TO: Honorable Mayor and Members of the City Council

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

SUBJECT: Establish Rules and Limits When Community-Based Organizations Receive City Funding Without Procurement to Promote Transparency, Fairness, and Stewardship of Public Funds

## RECOMMENDATION

Approve the resolution and refer to the City Manager to establish an open and transparent process for community-based organizations seeking a grant of emergency funds outside of the City's existing request for proposal (RFP) or other procurement processes. The process to be established should include the following components:

- **Annual Funding Limit**. Establish a maximum amount of $25,000 annually to be granted to a Berkeley-based non-profit or public organization, and a grand total of $225,000 annually to up to nine community-based organizations operating in Berkeley.
- **"Declaration of Need" Form Available on a City Webpage**. A Declaration of Need application form should be made available on a dedicated City webpage to ensure all community-based organizations have an equal opportunity to learn about the availability of funds, including the deadline for submitting the completed form.
- **Declaration of Need Form Should Require Documentation of Financial Need and Non-Profit Status (When Appropriate)**. The Declaration of Need form should be short to reduce the burden on community-based organizations but should include at a minimum a request to explain the purpose/need for the funds

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and document the organization's financial need. In addition, the City should verify that the organization is a registered non-profit organization (if applicable).[1]

- **Selection Process**. The City Manager shall establish a process for selecting qualifying community-based organizations, including establishing a scoring criteria and submitting recommendations to Council as part of the annual budget development process. Pursuant to Budget and Finance Policy Committee discussion, to the extent practicable, consider awarding funds on a rolling basis to better support agencies who may be facing a fiscal emergency.
- **Financial Reporting Requirement for Selected Community-Based Organizations**. For organizations selected to receive emergency funding of up to $25,000, the City shall enter into a contract that requests documentation at six months and 12 months to ensure that funds were used for the purpose for which they were requested. This financial reporting requirement should apply as soon as practicable to FY2024-25 budget allocations, and continue for future budget years.

## POLICY COMMITTEE RECOMMENDATION

On February 13, 2025 the Budget and Finance Policy Committee adopted the following action: M/S/C (Kesarwani/Blackaby) to send the item to Council with a positive recommendation. Vote: All Ayes. Pursuant to the discussion at that policy meeting the recommendation to consider awarding funds on a rolling basis to better support agencies who may be facing a fiscal emergency has also been added to this item, as noted above.

## CURRENT SITUATION AND ITS EFFECTS

***Historically, Community-Based Organizations In the Know Have Approached a Member(s) of the Council to Sponsor a Budget Referral for an Award of Funds . . .*** Historically, organizations seeking one-time assistance for such needs as capital improvements to facilities, staffing support, and funding of special programs have appealed directly to individual Councilmembers. These requests have been considered by Council in the form of budget referrals during the annual June budget process and mid-year budget adjustment, with organizations receiving awards totaling as much as $4.5 million in FY 2023-24. This process is not transparent to all organizations who may be in need of financial assistance, and therefore privileges certain organizations above others who may be equally or more deserving of financial support.

***. . . However, Awarding Funds Without an Open and Transparent Procurement Does Not Treat All Organizations Fairly.*** Smaller and newer Berkeley-based non-profit

[1] Generally, these awards should be granted to registered non-profit organizations; however, there are instances in which the Berkeley Unified School District or other similar publicly-funded organizations may receive funding. Only organizations that are registered non-profits (through the California Attorney General's Office) or are largely publicly-funded are eligible to receive funding.

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organizations may not be familiar with the City's budgeting process and the practice of Council budget referrals.

***Procurement Via a Request for Proposal or Other Competitive Process Is Considered a Best Practice in Government Contracting***.[2] The benefit of issuing a request for proposal (RFP) is that an open and transparent process treats all organizations fairly. The RFP clearly indicates the criteria by which organizations will be assessed. A scoring panel comprised of individuals without ties to any organization rates each RFP response based on the standard criteria. This process ensures that all organizations have an equal opportunity to receive funds and that all organizations are considered fairly. An RFP process ensures that public funding is awarded based on merit, rather than personal relationships or other subjective criteria. Further, an RFP process ensures that public funds are awarded to high-performing organizations.

## BACKGROUND

Over the last five fiscal years, nearly $8.8 million has been allocated to 25 different community-based organizations.[3] Cumulative year-over-year allocations to individual organizations range from $10,000 to as much as $5,050,000. The breakdown of funds allocated through a non-competitive process by fiscal year is noted in Exhibit 1 below.

**Exhibit 1: Over Last Five Fiscal Years, City Has Awarded $8.8 Million Without Procurement Process**

| Fiscal Year | Numbers of Community-Based Organizations Funded Per Year[4] | Amount Allocated |
|---|---|---|
| 2021-22 | 4 | $245,000 |
| 2022-23 | 12 | $2,542,000 |
| 2023-24 | 11 | $4,516,000 |
| 2024-25 | 15 | $1,133,665 |
| 2025-26 | 7 | $349,665 |
| **TOTAL** | **49** | **$8,786,330** |

Source: City of Berkeley data, with analysis conducted by the Office of Councilmember Kesarwani

***The City Already Has Request for Proposal (RFP) Processes Totaling $15.5 Million Annually for Community Agencies***. The City's Health, Housing and Community Services Department issues an RFP for community funding every four years. These

[2] International City/County Management Association, 2008. https://icma.org/sites/default/files/302081_RFP_bestpractices-1.pdf

[3] The total of 49 shown in Exhibit 1 is due to the same organizations receiving multiple awards.

[4] While the number of allocations to agencies between FY 2022 - 2026 total 49, only 25 different agencies received the funds. Several of the same agencies received funding several years in a row.

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funds support a variety of programs and services, including childcare and youth services; housing and community facilities rehabilitation; services for people with disabilities; employment support; health care; homelessness services; as well as legal and senior services. The funding is primarily made up of a variety of local funds (89 percent), various federal funds (11 percent), and to a lesser extent state funding (less than 1 percent) to approximately 35-40 community-based organizations.

***Two Additional Request for Proposal (RFP) Processes Have Been Established Recently at the Request of Councilmember Kesarwani to Meet Unmet Needs***. Councilmember Kesarwani has introduced items requesting the creation of an RFP process to (1) support arts and cultural organizations in need of one-time capital funds, and (2) provide funding to augment services provided by food insecurity providers. In both cases, the intent is to ensure that all qualified organizations have a fair opportunity to seek funds, thereby ensuring that public funds are awarded to the most qualified organization(s). In October 2019, Councilmember Kesarwani's Council item, "Referral to the Civic Arts Commission to develop a grant program available for arts and cultural organizations to support retaining and improving creative spaces for artists" was approved unanimously on consent, resulting in an annual allocation of $300,000 to administer and fund an annual Capital Projects Grant Program.[5] Today, the Capital Projects Grant program is listed among the several other grant opportunities for artists, festivals and organizations on the City of Berkeley website, giving all arts organizations an equal opportunity to seek support.[6] In June 2024, Councilmember Kesarwani's Council item, "Referral for Development of Request for Proposal (RFP) to Support Berkeley-Based Non-Profit Food Assistance Providers Serving Food Insecure Households" was approved unanimously on consent.[7] This referral recommended that the City develop and fund an RFP process to support Berkeley-based non-profit food assistance providers to address capacity needs such as expanding services, purchasing equipment, and hiring staff. In August 2024, the City of Berkeley posted notice of a Berkeley-based Food Assistance RFP and funds were awarded.[8]

## RATIONALE FOR RECOMMENDATION

This referral seeks to ensure that the City's financial resources are more broadly accessible to all community-based organizations while achieving greater transparency in

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[5] See: Referral Response: Grant Program for Retaining and Improving Creative Spaces, March 21, 2023 Berkeley City Council meeting: https://berkeleyca.gov/sites/default/files/documents/2023-03-21%20Item%2018%20Grant%20Program%20for%20Retaining%20and%20Improving%20Creative%20Spaces.pdf

[6] City of Berkeley's Civic Arts Grants webpage: https://berkeleyca.gov/community-recreation/civic-arts/civic-arts-grants

[7] Annotated Agenda for the June 25, 2024 Berkeley City Council meeting: https://berkeleyca.gov/sites/default/files/city-council-meetings/2024-06-25%20Annotated%20Agenda%20-%20Council.pdf, page 23

[8] CIty of Berkeley:=, Request for Proposals (RFP) Specification No. 25-11675-C for Berkeley-based Food Assistance Proposals: https://berkeleyca.gov/sites/default/files/documents/25-11675-C%20-%20Berkeley%20Based%20Food%20Assistance_0.pdf

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funding allocations. It will also provide greater predictability of the fiscal impacts on the City's budget.

**FISCAL IMPACT**

The fiscal impacts of this referral are minimal outside of staff time to develop a well-defined process for addressing the allocation of emergency funds to community-based organizations.

**CONTACT**

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

**ATTACHMENT**

Resolution No ##,###-N.S. ESTABLISHING RULES AND LIMITS FOR COMMUNITY-BASED ORGANIZATIONS RECEIVING CITY FUNDING OUTSIDE PROCUREMENT TO PROMOTE TRANSPARENCY, FAIRNESS, AND ACCOUNTABILITY

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

ESTABLISHING RULES AND LIMITS FOR COMMUNITY-BASED ORGANIZATIONS RECEIVING CITY FUNDING OUTSIDE PROCUREMENT TO PROMOTE TRANSPARENCY, FAIRNESS, AND ACCOUNTABILITY

WHEREAS, the use of a Request for Proposal (RFP) or other open and transparent procurement process is widely recognized as a government best practice that aligns with principles of good governance; and

WHEREAS, the City of Berkeley has allocated $8.8 million over the past five fiscal years to community-based organizations outside of a procurement process, with individual awards ranging from $10,000 to $5,050,000; and

WHEREAS, some community-based organizations have historically bypassed established procurement processes by directly appealing to Councilmembers for a grant of public funds; and

WHEREAS, the City of Berkeley currently administers a number of transparent and competitive RFP processes for community-based organizations, one of which totals $15.5 million annually to fund vital services such as youth programs, housing rehabilitation, disability services, employment support, healthcare, homelessness services, legal assistance, and senior care; and

THEREFORE, BE IT RESOLVED, that the City of Berkeley will establish an open and transparent process for community-based organizations seeking emergency funding outside the RFP or other standard procurement mechanisms; and

BE IT FURTHER RESOLVED, that the City of Berkeley will cap emergency funding allocations at a maximum of $25,000 annually per Berkeley-based nonprofit or public organization, with a total budget of $225,000 annually for up to nine community-based organizations serving Berkeley residents; and

BE IT FURTHER RESOLVED, that any budget referrals for Berkeley-based nonprofit or public organizations exceeding $25,000 must be accompanied by a formal Request for Proposal (RFP) process to ensure fair and equal access for all Berkeley organizations providing similar services; and

BE IT FURTHER RESOLVED, that the City shall create and maintain a dedicated webpage hosting a “Declaration of Need” application form to ensure equitable access to information about emergency funding opportunities, including submission deadlines; and

BE IT FURTHER RESOLVED, that the “Declaration of Need” form shall be concise to minimize the administrative burden on applicants but must include a clear explanation of the purpose and justification for the emergency funding request; and

BE IT FURTHER RESOLVED, that funding will only be allocated to organizations that are registered nonprofits and have filed an Internal Revenue Service Form 990, or equivalent financial documentation, to demonstrate accountability; and

BE IT FURTHER RESOLVED, that all organizations receiving emergency funding must submit progress documentation at six months and a final report at 12 months to verify that funds were used for their stated purposes; and

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BE IT FURTHER RESOLVED, that these requirements shall apply retroactively to any undisbursed funds previously approved in FY 2024-25 and to all future grants and allocations beginning in January 2025, ensuring the responsible stewardship of public funds and adherence to principles of fairness, equity, transparency, and accountability.

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BEN BARTLETT
VICE MAYOR

# 02a.13

CONSENT CALENDAR
April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author)

Subject: Celebración Cultural Sylvia Mendez (Spring Cultural Celebration) by the Sylvia Mendez School PTA: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

## RECOMMENDATION

Adopt a Resolution approving the expenditure of funds, including $1,500 from the discretionary council office budget of Councilmember Ben Bartlett, to the Sylvia Mendez Elementary School PTA to host a Spring Cultural Celebration event on April 27, 2025, on campus. 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 City Councilmembers who would like to contribute.

## BACKGROUND

This year, the Berkeley Unified School District's (BUSD) only Two-Way Immersion school, Sylvia Mendez Elementary (Sylvia Mendez), will host a Cultural Celebration to celebrate the global heritage, various nationalities, and other cultures important to its community. Community members are creating teams to determine the information, tastes, crafts, dress, music, and performances they want to share at the event.

This is the third year of the event. In previous years, teams were formed to represent the following cultures: Eritrea, Mexico, Chile, Cuba, Canada, African American, Croatia, Farm & Garden, Rainbow Families, and Venezuela. Meals were catered by different local ethnic restaurants and supplemented by some of the teams with homemade foods. In addition, the tables shared cultural music in a community playlist, and there was live music. In all, the participants shaped the events, which were well received by the community.

With such great success, the Sylvia Mendez PTA is hosting this event for the third consecutive time, maintaining the same goal of contextualizing our students' cultural influences, backgrounds, and much more. The funds requested are intended to offset some costs associated with the event. Therefore, they should be sent to the Sylvia Mendez PTA organization to distribute accordingly.

This parent-led committee is already funding most of the event's costs, which has been a reliable resource to offset budget shortfalls. The donations ultimately support the program guidelines laid out by BUSD (on the Sylvia Mendez Elementary website[1]), which is to "develop

[1] https://www.berkeleyschools.net/schools/elementary-schools/sylviamendez-elementary/

long-lasting relationships and cultural appreciation for peers who are often separated by race and language." This is further defined as the school's vision on its website[2] "to seek to honor and understand families."

Since the pandemic restrictions were lifted in 2022, Sylvia Mendez Elementary has hosted well-attended Spring Events. Scheduled late in the school year, they have proven crucial for the community. Facing heightened challenges this year due to on-site construction that began last summer and will continue at least through next school year, fostering relationships by building a greater understanding of families within and the development of our community is fundamental in uplifting morale.

ENVIRONMENTAL SUSTAINABILITY
No negative impact.

FISCAL IMPACTS OF RECOMMENDATION
No General Fund impact; $1,500 is available from the discretionary council office budget of Councilmember Ben Bartlett.
The cost is Sylvia Mendez School PTA: Celebración Cultural (Spring Cultural Celebration).

CONTACT PERSON

| | |
|---|---|
| Councilmember Ben Bartlett | bbartlett@cityofberkeley.info |
| James Chang | jchang@cityofberkeley.info |

ATTACHMENT
1. Resolution

[2] https://www.sylviamendezschool.org/en/welcome-eng

Attachment 1

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

AUTHORIZE THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A DONATION TO THE SYLVIA MENDEZ SCHOOL PTA TO PROVIDE SUPPORT FOR A SPRING CULTURAL CELEBRATION EVENT.

**WHEREAS,** Councilmember Ben Bartlett has surplus funds in his office expenditure account; and

**WHEREAS,** Sylvia Mendez School PTA, a California non-profit organization, will receive funds in the amount of $1,500 from Councilmember Ben Bartlett's office expenditure account; and

**WHEREAS,** the Sylvia Mendez School PTA supports equitable public education for students, families, and our community through grants and volunteer programs; and

**WHEREAS,** the provisions of such services would fulfill the municipal public purpose of providing students and the youth with opportunities through educational programs and activities to encourage them to learn and embrace cultural diversity;

**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 Sylvia Mendez School PTA for this purpose of supporting students and the youth in highlighting cultural heritage that forms the community of the student body.

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# 02a.14

CONSENT CALENDAR
April 15, 2025

**Igor Tregub,** Councilmember District 4

**Shoshana O'Keefe**, Councilmember District 5

**Mark Humbert**, Councilmember District 8

**Adena Ishii**, Mayor

To: Honorable Mayor and Members of the City Council

From: Councilmembers Igor Tregub (Co-Author), Shoshana O'Keefe (Co-Author), and Mark Humbert (Co-Author), and Mayor Adena Ishii (Co-Sponsor)

Subject: Resolution Commemorating April 24, 2025, as Berkeley Holocaust Remembrance Day

## RECOMMENDATION

Adopt a Resolution proclaiming April 24, 2025, as Holocaust Remembrance Day in the City of Berkeley, in memory of those who were murdered and in honor of the survivors as well as the rescuers and liberators; and committing to never forgetting the events of the Holocaust, actively working to combat antisemitism, racism, bigotry, and hatred in all forms, and promote human rights and dignity for all.

## BACKGROUND

This year, the City of Berkeley will hold its 22nd Annual Holocaust Remembrance Day. The program will take place virtually on April 24, 2025.

The Holocaust was a crime of unimaginable inhumanity, in which six million Jews were targeted for persecution and death—alongside the Roma and Sinti peoples, individuals with mental illness and physical disabilities, members of the queer community, Slavs, Poles, and those who were part of anti-Nazi resistance networks across Europe.

Berkeley's Annual Holocaust Remembrance Day honors the memory of those who were murdered and those who survived. It gives voice to survivors and their families and invites the broader Bay Area community to reflect on this horrific chapter in human history—so that we may learn from it and choose differently.

DRAFT

As false information about the Holocaust spreads, and as antisemitism[1,2,3], racism, and violence against historically targeted and oppressed communities continue to rise[4], the importance of remembering becomes ever more urgent. Holocaust Remembrance Day offers a vital space to stand against antisemitism, bigotry, and hatred in all forms, to uphold human rights and dignity and reaffirm our resolve to never forget.

**FISCAL IMPACTS**

None.

**CONTACT**

Councilmember Tregub, 510-981-7140, itregub@berkeleyca.gov

Councilmember O'Keefe, 510-981-7150, sokeefe@berkeleyca.gov

Councilmember Humbert, 510-981-7180, mhumbert@berkeleyca.gov

**Attachments:**

1. Resolution

DRAFT

[1] https://www.adl.org/resources/press-release/us-antisemitic-incidents-skyrocketed-360-aftermath-attack-israel-according

[2] https://oag.ca.gov/news/press-releases/attorney-general-bonta-releases-2023-hate-crime-report-highlights-continued

[3] https://berkeleyca.gov/sites/default/files/documents/2025-03-18%20Special%20Item%2001%202024%20Berkeley%20Police%20Department.pdf; https://bpd-transparency-initiative-berkeleypd.hub.arcgis.com/pages/current-trends

[4] https://abcnews.go.com/US/hate-crimes-lgbtq-community-rise-fbi-data/story?id=113962673

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

**COMMEMORATING APRIL 24, 2025, AS BERKELEY HOLOCAUST REMEMBRANCE DAY**

**WHEREAS,** the Holocaust was a crime of shocking inhumanity, targeting for persecution and death, six million Jews as well as the Roma and Sinti people, those with mental illness and physical disabilities, members of the Queer community, Slavs, Poles, and members of anti-Nazi networks from throughout Europe; and

**WHEREAS,** Holocaust Remembrance Day serves as an imperative reminder of the appalling crimes and atrocities of the Holocaust so that we may keep them in our memory and continue to condemn them for generations to come; and

**WHEREAS,** false information on the Holocaust continues to distort, deny, and trivialize the horrendous truth about what took place during the Nazi regimes; and

**WHEREAS,** in January 2024, the Anti-Defamation League reported skyrocketing antisemitic incidents in the U.S., having recorded a total of 3,291 antisemitic incidents in the prior three months, a 361-percent increase compared to the same period one year prior[5]; and

**WHEREAS,** anti-Jewish bias events in California rose from 189 in 2022 to 289 in 2023, an increase of 52.9%, according to the California Attorney General[6]; and

**WHEREAS,** the Berkeley Police Department reports that, since October of 2023, there has been an increase overall in the number of anti-Jewish hate incidents and that, in 2024, Anti-Jewish hate crimes made up 18.6% of overall hate crimes, the third-highest category and one of only three categories that are in the double digits[7]; and

**WHEREAS,** prejudice, violence and crimes against other communities that historically have been targeted, oppressed or disadvantaged have been rising in recent years[8]; and

**WHEREAS,** the purpose of Berkeley's Holocaust Remembrance Day is to come together as a community to remember the Holocaust, to honor survivors who chose to rebuild their lives in Berkeley and the Bay Area, and to reflect on the need to respect all people

**NOW THEREFORE, BE IT RESOLVED** that the Berkeley City Council does hereby proclaim April 24, 2025, as Holocaust Remembrance Day in the City of Berkeley, in memory of those who were murdered and in honor of the survivors as well as the rescuers and liberators; and

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[5] https://www.adl.org/resources/press-release/us-antisemitic-incidents-skyrocketed-360-aftermath-attack-israel-according

[6] https://oag.ca.gov/news/press-releases/attorney-general-bonta-releases-2023-hate-crime-report-highlights-continued

[7] https://berkeleyca.gov/sites/default/files/documents/2025-03-18%20Special%20Item%2001%202024%20Berkeley%20Police%20Department.pdf; https://bpd-transparency-initiative-berkeleypd.hub.arcgis.com/pages/current-trends

[8] https://abcnews.go.com/US/hate-crimes-lgbtq-community-rise-fbi-data/story?id=113962673

**BE IT FURTHER RESOLVED** that the City of Berkeley is committed to never forgetting the events of the Holocaust, actively working to combat antisemitism, racism, bigotry, and hatred in all forms, and promote human rights and dignity for all.

DRAFT

**02a.15**

**Igor Tregub,** Councilmember District 4
**Shoshana O'Keefe**, Councilmember District 5
**Mark Humbert**, Councilmember District 8
**Adena Ishii**, Mayor

CONSENT CALENDAR
April 15, 2025

To: Honorable Mayor and Members of the City Council
From: Councilmembers Igor Tregub (Co-Author), Shoshana O'Keefe (Co-Author), Mark Humbert (Co-Author), and Mayor Adena Ishii (Co-Sponsor)
Subject: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds to 2025 Virtual Holocaust Remembrance Day Program

## RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed $500 per Councilmember from the D13 Discretionary Accounts of members of the Berkeley City Council, including $500 from Councilmember O'Keefe, $500 from Councilmember Tregub, $500 from Councilmember Humbert, and $500 from Mayor Ishii to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund.

The relinquishment of funds from Councilmembers O'Keefe, Tregub, Humbert and Mayor Ishii's respective discretionary Council Office Budgets as well as any other members of the Berkeley City Council who would like to contribute, allows the City of Berkeley to invite the community to its 22nd Annual Holocaust Remembrance Day virtual program, created by the community with City Council support.

This year's program will be held virtually on April 24, 2025.

## BACKGROUND

The City of Berkeley's Annual Holocaust Remembrance Day program has been supported by the City Council since its inception in 2002. The program has occurred annually, except in the year 2020 when the COVID-19 pandemic was declared without enough time to pivot to a virtual program. Berkeley's Holocaust Remembrance Day has become a treasured event for Holocaust survivors, family members and the Bay Area community as the only secular, city-sponsored program in the region. The community program invites attendees to honor those who were

murdered in the Holocaust as well as those who survived. With the dramatic rise of antisemitic and other hate incidents and hate crimes in our region and nation-wide, it is critical that we hear the firsthand stories of survivors of the Holocaust and reaffirm our resolve to never forget.

**FISCAL IMPACTS**

No General Fund impact. Up to $500 is available from contributing Councilmembers' Council Office Budget discretionary accounts.

**CONTACT**

Councilmember Tregub, 510-981-7140, itregub@berkeleyca.gov
Councilmember O'Keefe, 510-981-7150, sokeefe@berkeleyca.gov
Councilmember Humbert, 510-981-7180, mhumbert@berkeleyca.gov
Mayor Ishii, 510-981-7100, aishii@berkeleyca.gov

Attachments:

1. Resolution

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

**AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE**

**WHEREAS,** Councilmembers O'Keefe, Tregub and Humbert have surplus funds in their D13 discretionary office expenditure account and will contribute $500, and invite the Mayor and other Councilmembers to join in contributing; and

**WHEREAS,** a California nonprofit tax-exempt corporation, The Jewish Community Center of the East Bay, serves as the fiscal sponsor of the Holocaust Remembrance Day program and will receive funds in an amount up to $500 per contributing Councilmember's discretionary account; and

**WHEREAS,** the provision of such services would fulfill the municipal public purpose of providing a community program supporting Holocaust survivors, community recognition and education about the Holocaust and unity among Berkeley residents;

**NOW, THEREFORE, BE IT RESOLVED,** by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget, up to $500 per office, shall be granted to the Jewish Community Center of the East Bay to fund the City of Berkeley's virtual 22nd Annual Holocaust Remembrance Day program on April 24, 2025.

**02a.16**

Igor Tregub
Councilmember, District 4

CONSENT CALENDAR
April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Councilmember Igor Tregub (Author), Councilmember Brent Blackaby (Co-Sponsor), Councilmember Cecilia Lunaparra (Co-Sponsor), Councilmember Terry Taplin (Co-Sponsor)

Subject: Resolution in Support of California Senate Bill 42 (Umberg, Allen) California Fair Elections Act of 2026 to Amend Sections 85300 and 85320 of the Government Code, relating to the Political Reform Act of 1974.

## RECOMMENDATION

Adopt a resolution in support of California State Senate Bill 42 (Umberg, Allen) California Fair Elections Act of 2026 to Amend Sections 85300 and 85320 of the Government Code, relating to the Political Reform Act of 1974, which is moving through the legislature to appear on the California general election ballot on November 3rd, 2026; and distribute copies to the California Governor Gavin Newsom, Senator Jesse Arreguín, Assemblymember Buffy Wicks, California Senate President pro Tempore Mike McGuire, and California Assembly Speaker Robert Rivas to advocate for its passage.

## CURRENT SITUATION AND ITS EFFECTS

The Political Reform Act, 2025 Edition, states that a public officer or candidate is generally prohibited from using public funds to seek elective office, unless a dedicated fund is established by the state or local government, and the fund is available to all

qualified candidates regardless of incumbency or party, with established criteria for determining eligibility.[1]

Senate Bill 42 seeks to amend Sections 85300 and 85320 of the Government Code, relating to the Political Reform Act of 1974 to allow public officers or candidates to use public funds for seeking office with strict criteria and expenditure limits, prohibit the use of funds for legal defense or personal loans, establish more robust penalties for foreign interference in elections, and require voter approval in the 2026 general election.[2]

Senate Bill 42 will not establish public financing for campaigns or mandate that any government provide it. Instead, it more readily gives local and state governments the option to create laws that establish public campaign financing programs, while ensuring basic protections for fairness, accountability, and source of funds.

Berkeley is one of only five cities, alongside Long Beach, Los Angeles, Oakland, and San Francisco, that has passed a statue, ordinance, resolution, or charter to create a dedicated fund to extend public funds to candidates seeking elective office.[3] Nearly 65% of Berkeley Voters in 2016 passed Measure X1 to establish a $500,000 annual fund to pay for the city's public campaign funding program for city council members and the mayor who follow certain restrictions and rules in gathering their campaign funding.[4] In 2020, the City Council extended these funds to School Board Director, Rent Board Commissioner, and City Auditor candidates.[5]

## FISCAL IMPACTS OF RECOMMENDATION

Limited staff time is required to communicate the City position to the State representatives.

## ENVIRONMENTAL SUSTAINABILITY

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

## CONTACT PERSON

Councilmember Igor Tregub, Council District 4, 510-981-7140
ltregub@berkeleyca.gov

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[1] https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/The%20Political%20Reform%20Act/2025/2025_Act.pdf
[2] Senate Bill 42 https://legiscan.com/CA/text/SB42/id/3103934
[3] Senate Bill 42 Fact Sheet, Senator Umberg
[4] https://ballotpedia.org/Berkeley,_California,_Funding_for_Public_Campaign_Finance_Program,_Measure_X1_(November_2016)
https://berkeleyca.gov/sites/default/files/documents/FCPC%20Filing%20Manual%202024%20-%20FINAL.pdf

Amy Johnson, Legislative Aide, Council District 4
amjohnson@berkeleyca.gov

Attachments:

1. Resolution
2. Fact Sheet

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

**RESOLUTION IN SUPPORT OF CALIFORNIA SENATE BILL 42 CALIFORNIA FAIR ELECTIONS ACT OF 2026 TO AMEND SECTIONS 85300 AND 85320 OF THE GOVERNMENT CODE, RELATING TO THE POLITICAL REFORM ACT OF 1974**

**WHEREAS**, Senate Bill 42 seeks to provide voters with the opportunity to decide, on the November 2026 ballot, whether to amend current restrictions on public financing of campaigns in California, while establishing basic requirements for public financing systems to ensure fairness, accountability, and transparency; and

**WHEREAS**, Senate Bill 42 is supported by a broad coalition of civil rights organizations, voters, and legal experts, who recognize it as a critical step in addressing the influence of money in politics, and is sponsored by the California Clean Money Campaign and cosponsored by California Common Cause and the League of Women Voters of California, all dedicated to promoting transparency, accountability, and fairness in elections; and

**WHEREAS**, the current ban on public financing restricts local governments and the state from creating systems that amplify the voices of everyday voters, reduce the influence of wealthy donors, and empower diverse candidates to run for office and better represent their communities; and

**WHEREAS**, Senate Bill 42 would repeal the ban on public campaign financing, ensuring that no public funds would be used for education, transportation, or public safety purposes, while setting strict criteria for candidates, including restrictions on using funds for legal defense, fines, or repayment of personal loans; and

**WHEREAS**, Senate Bill 42 does not mandate public financing, but gives local governments and the state the option to create such programs with necessary safeguards, promoting a fairer, more inclusive electoral process; and

**WHEREAS**, Senate Bill 42 aligns with the growing desire among voters for changes to campaign finance systems, with significant support for public financing in charter cities and a strong push for reform across the state; and

**WHEREAS**, the passage of Senate Bill 42 would help strengthen California’s democratic processes by providing greater access to candidates from all backgrounds, ensuring public trust in the electoral system; and

**WHEREAS**, the City of Berkeley is one of the five municipalities that has established a public fund for more equitable elections; and

**WHEREAS,** 65% of Berkeley Voters in 2016 passed Measure X1 to establish a $500,000 annual fund to pay for the city's public campaign funding program for city

council members and the mayor who follow certain restrictions and rules in gathering their campaign funding; and

**WHEREAS,** in September of 2021, the City Council extended these funds to School Board Director, Rent Board Commissioner, and City Auditor candidates.

**NOW, THEREFORE, BE IT RESOLVED,** that the Berkeley City Council hereby declares its support for California State Senate Bill 42, which would allow voters to decide on repealing the ban on public financing of campaigns and provide a fair, accountable framework for future public financing programs; and

**BE IT FURTHER RESOLVED**, that the Berkeley City Council directs the City Manager to distribute copies to the California Governor Gavin Newsom, Senator Jesse Arreguín, Assemblymember Buffy Wicks, California Senate President pro Tempore Mike McGuire, and California Assembly Speaker Robert Rivas to advocate for its passage.

**PASSED AND ADOPTED** by the City Council of Berkeley on this 15 day of April 2025, by the following vote:

## SUMMARY

SB 42 will provide voters the opportunity to decide on a measure on the November 2026 ballot to remove the current prohibition of public financing of campaigns in California while establishing basic requirements that public financing systems and candidates using public funding must follow to protect taxpayers and maximize the benefit to voters.

## BACKGROUND

In 2010, a 5-4 majority of the US Supreme Court ruled in *Citizens United v. FEC* that corporations and outside groups can spend unlimited funds on elections, reversing longstanding federal campaign finance regulations that limited the influence of big money in elections.

Five charter cities have active public financing systems that amplify the voices of everyday voters and provide candidates with an alternative fundraising system to relying on wealthy donors: Berkeley, Long Beach, Los Angeles, Oakland, and San Francisco.

Unfortunately, such programs are prohibited in California jurisdictions other than charter cities by the Political Reform Act of 1974 due to a provision enacted by Proposition 73 in 1988. In 2016, the legislature passed, and Governor Jerry Brown signed, SB 1107 (Allen) that would have removed the ban, but the courts ruled the question must be put before the voters.

## NEED FOR THE BILL

Voters are increasingly concerned about the problem of money in politics, with only 20% in a recent poll saying they were satisfied with the nation's campaign finance laws. In a June 2024 poll conducted by the California Clean Money Campaign, 84% of likely voters said we need to change the way we finance election campaigns, with 56% saying we need to make major changes.

Public campaign financing measures to address such concerns are extremely popular and have been approved overwhelmingly by voters in charter cities. 75% of voters voted for Los Angeles' Measure H in 2011, 65% voted for Berkeley's Measure X1 in 2016, and 74% voted for Oakland's Measure W in 2022. But voters and candidates in counties, districts, general law cities, and the state currently cannot be given the same opportunity.

Public financing of campaigns would reduce the barriers of entry to run for public office – empowering everyday Californians to represent their communities and diversifying the candidate pool.

## SOLUTION

SB 42 will give voters the chance to address these issues and restore control to local governments and the state by placing the California Fair Elections Act on the 2026 ballot to repeal the ban on campaign public financing while requiring that no public moneys be used that are earmarked for education, transportation, or public safety.

The measure will require that voluntarily participating public funding candidates must abide by expenditure limits and meet strict criteria to qualify such as requiring that candidates must receive small dollar contributions or vouchers from a specified number of adult residents. It will bar the use of public funds to pay for legal defense, fines, or repayments of personal loans to candidates' campaigns, and will specify that public funding systems shall not discriminate based on party or according to whether a candidate is a challenger or an incumbent.

SB 42 will not create public financing of campaigns or require any government to offer public financing. It will simply remove the ban and allow local governments and the state the option to enact laws that create programs for public financing of campaigns while requiring basic protections for fairness, accountability, and where the money can come from.

## SUPPORT

California Clean Money Campaign (sponsor)
California Common Cause (cosponsor)
League of Women Voters of California (cosponsor)

## FOR MORE INFORMATION

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Shoshana O'Keefe
CITY COUNCILMEMBER DISTRICT 5

# 02a.17

CONSENT CALENDAR
April 15, 2025

To: Honorable Mayor and Members of the City Council
From: Councilmember Shoshana O'Keefe (Author)
Subject: Budget Referral for Thousand Oaks Park Playground Update

## RECOMMENDATION

Refer $80,000 to the June budget process (FY26 Mid-Biennial Update) for the completion of a new airplane themed play structure at Thousand Oaks Park, located at 1700-1780 Tacoma Avenue.

## SUMMARY

On October 16, 2024, Berkeley resident Michael Seltzer - known to his friends and family as "Mikey" – passed away after a heroic battle with cancer. Mikey likely contracted cancer as a result of exposure to toxic chemicals while deployed, and was specifically recognized for his courage and sacrifice by Speaker Nancy Pelosi during the signing of the PACT Act.

A longtime resident of North Berkeley, Mikey graduated from Martin Luther King Jr. Middle School (then known as King Jr. High), Berkeley High, and UC Berkeley. Throughout his life, he stayed connected to his roots and community, raising his own family in Berkeley. His three children attended Thousand Oaks Elementary.

City of Berkeley (City) staff was recently approached by a former Berkeley resident and Michael's best friend, Peter Kaes, who expressed interest in working with the Parks, Recreation and Waterfront (PRW) Department on a donation in his honor. An accomplished and decorated pilot, Mikey's friends and family have proposed a fitting project in his honor – the creation of a new airplane themed play structure at Thousand Oaks Park.

## BACKGROUND

Thousand Oaks Park is a community space that provides a safe and welcoming environment for students and families to enjoy outdoor activities. The park hosts a play structure for 5-12 year olds, sports fields, and picnic areas. The park area is owned by Berkeley Unified School District (BUSD) and operated and maintained by the City per the 2020 Joint Use Agreement. This 25 year agreement provides year round public access to the Park. Originally developed by BUSD in 1950, the current play structure was redesigned in the late 1990s by a group of volunteers from the Thousand Oaks Parks Society (TOPS) and improved by using City Measure Y Funds.

This item would help fund approximately one-third of the creation of a new play structure modeled after an airplane that would be publicly accessible, serving students, families, and the greater Berkeley community.

Studies routinely show that play and playgrounds provide a wide range of benefits to children, and are an integral part of a child's development. According to the International Journal of Behavior Nutrition and Physical Activity, "play is considered fundamental for a child's development as play helps children develop social, academic, and personal competencies."[1] Parks like Thousand Oaks can support play-based learning, promote socialization, fuel creativity, and more. The addition of a less conventional play structure, such as an airplane, could lead to more imaginative play while also honoring a member of the Berkeley community.

Figure 1 by Groundworks Office (Pro bono)

[1] Schipperijn, J., Madsen, C.D., Toftager, M. *et al.* The role of playgrounds in promoting children's health – a scoping review. *Int J Behav Nutr Phys Act* 21, 72 (2024). https://doi.org/10.1186/s12966-024-01618-2

Figure 2 by Groundworks Office (Pro bono)

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

The City of Berkeley's General Plan's Open Space and Recreational Element outlines policy priorities for the City as it relates to open spaces and recreation, and states: "give highest priority to maintaining and improving the City's existing network of open space and recreation facilities."[2]

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

Councilmember Shoshana O'Keefe discussed the project with PRW Director, Scott Ferris, and Park, Recreation and Waterfront Commissioner, Brennan Cox. The PRW Director expressed interest in completing such a project given that a significant donation will be possible.

FISCAL IMPACTS

The complete project, including planning, design and construction, is estimated to cost approximately $240,000. It is anticipated that the funding for this project will include this $80,000 referral, a donation of a similar dollar amount and FY26 Parks Tax Minor Maintenance allocation of $75,000.

CONTACT

Councilmember Shoshana O'Keefe, 510-981-7150

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[2] City of Berkeley. Open Space and Recreation Element - Introduction. April 23, 2002. https://berkeleyca.gov/sites/default/files/documents/08_Open%20Space%20and%20Recreation%20Element-FINAL.pdf

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**02a.18**

CONSENT CALENDAR
April 15, 2025

To: Honorable Mayor and Members of the City Council
From: Councilmember Sophie Hahn (Author)
Subject: Study: Sabbatical Leave for City of Berkeley Employees

## RECOMMENDATION

Refer to the City Manager study of a potential Sabbatical Leave policy for all City of Berkeley employees, modeled after the City's existing agreements with several bargaining units.

Consult with labor partners and City employees to explore a variety of terms and options, and the costs/benefits of unpaid, partially paid, and paid Sabbatical Leaves. Report findings to Council, outlining possible options and their financial impacts as well as potential benefits to recruitment, morale, longevity of tenure, and wellbeing.

## POLICY COMMITTEE RECOMMENDATION

On February 27, 2025, the Budget & Finance Policy Committee adopted the following action: M/S/C (Ishii/Kesarwani) to send the item to Council with a negative recommendation. Vote: All Ayes.

## SUMMARY STATEMENT

A nationwide municipal worker shortage threatens the ability of local governments to address the needs of their constituents and deliver services to the community. To address this shortage, exacerbated by a wave of Baby Boomer retirements, and the pandemic's "great resignation," the City of Berkeley is working to both retain long-time employees and attract new talent.

In an increasingly competitive job market, and with neighboring cities also vying for skilled workers, Berkeley must consider new and innovative approaches. While the City already utilizes traditional strategies such as digital marketing and recruitment campaigns, expanding the benefits available to employees can increase the City's overall competitiveness and demonstrate appreciation for long-term employees.

Sabbatical leave is already included in Memorandums of Understanding (MOUs) between the City of Berkeley and SEIU Local 1021, representing Community Services and Part-Time Recreation Activity Leaders, and Local One, the Public Employees Union.

This item refers to the City Manager to evaluate options and consider the benefits and costs of adopting a Sabbatical Leave policy across the organization, including possible paid and partially paid sabbatical leaves, enabling long-term employees to enjoy periodic "work breaks" to pursue outside interests, spend time with family, travel, gain skills, or simply rest, recharge and refresh.

BACKGROUND

Sabbaticals are periods of extended leave – paid or unpaid – traditionally granted to university professors and more recently to other workers for study, travel, or personal growth. Employees take their leaves with a commitment to return to work. The modern sabbatical originated in academia – Harvard University in 1880 became the first to offer its professors time off from teaching duties to conduct academic research. Since then, the sabbatical has become more commonplace in the modern work environment, with companies like Microsoft, Intel, Deloitte, McDonalds, AARP, and many more now offering sabbaticals to their employees.

Sabbaticals offer many benefits and can be an important asset in attracting labor, reducing burnout – a major driver of high turnover – and increasing productivity. They allow employees to recharge while offering opportunities for both personal and professional growth. A rigorous study of professionals across private, public, and nonprofit sectors who took sabbaticals, conducted by the Harvard Business Review, found that "people largely experienced significant, positive changes in their work and life" and that sabbaticals could be viewed as "relatively easy-to-implement, preventative investments."[1]

According to a survey by the Society for Human Resource management, in 2019 only 11% of companies offered sabbaticals, and even less – just 5% offered paid sabbaticals.[2] The rarity of sabbaticals makes it a competitive benefit and a way for companies – and cities – to be ahead of the curve. The Harvard Business Review found that sabbaticals, as a benefit, are growing exponentially and Adecco, the world's largest Human Resources company, identified them as one of the top five workplace trends.[3] Experts say this trend is driven by a shift in how work fits into our lives, with workers increasingly prioritizing work-life balance, and wellbeing.

According to the National League of Cities, between March 2020 and March 2022, local government employment declined by more than 300,000 workers – threatening municipalities' abilities to perform essential functions and deliver critical services to residents.[4] Action is needed to address this shortage and ensure appropriate levels of staff are secured, and talented staff with unique skills and experiences are retained.

While the City of Berkeley has employed many different strategies to attract new employees, it has struggled to fill vacancies in multiple agencies and departments. According to 2024 presentations before the Budget Committee, Berkeley's Finance Department had a 25%

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[1] Schabram, K., Bloom, M., & DiDonna, D. (2023, February 23). Research: The Transformative Power of Sabbaticals. Harvard Business Review. https://hbr.org/2023/02/research-the-transformative-power-of-sabbaticals

[2] Sammer, J. (2023, December 21). Sabbaticals could be the solution to employee burnout. SHRM. https://www.shrm.org/topics-tools/news/benefits-compensation/sabbaticals-solution-to-employee-burnout

[3] Hall, R. (2024, August 27). Workers prioritising employers that offer sabbaticals in work-life balance shift. The Guardian. https://www.theguardian.com/money/article/2024/aug/27/workers-prioritising-employers-that-offer-sabbaticals-in-work-life-balance-shift

[4] Municipal Workforce Labor Shortage. National League of Cities. (2023, January 26). https://www.nlc.org/resource/improving-opportunities-and-boosting-economic-mobility/challenges/municipal-workforce-labor-shortage/

vacancy rate.[5] IT had an 18% vacancy rate.[6] Health, Housing, and Community Service had an 18% vacancy rate.[7] Many departments have utilized traditional means of recruitment including digital campaigns, landing page ads, and social media outreach. However, traditional methods have fallen short. To fill these vacancies, the City must become a more attractive employer to workers – and workers are changing.

Younger generations work differently, and they are more likely to value work-life balance and mental health. In a survey conducted by Handshake, 80% of undergrads expressed concern about burnout and almost 9 in 10 said work-life balance, mental health, and overall well-being are "very important" to them at work.[8]

In addition to appealing to young people, sabbaticals are a means of fostering talent, and workers who took sabbaticals "reported greater self-clarity and confidence in their managerial skills" and "those who filled in during the sabbatical-taker's absence had their own experiences of self-discovery and were able to showcase hidden talents."[9]

The Sabbatical Project, an organization researching the transformative power of sabbaticals, has found that sabbaticals can be a "peak-life experience," providing a space for "transitions, healing, discovery, and growth."[10] Testimonials collected from sabbatical takers detail stories of spending time with loved ones, reconnecting with one's culture and the natural world, taking up cooking, learning a new language and skill, healing one's body and mind, and more. A full collection of testimonials from the Sabbatical Project can be found at thesabbaticalproject.org/stories.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Currently, two city employee unions have bargained for sabbatical leave – SEIU Local 1021 representing Community Services and Part-Time Recreation Activity Leaders as well as Local One, the Public Employees Union.

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[5] Finance Department. (2024, May 8). Proposed Budget Fiscal Years 2025 & 2026: Finance. [PowerPoint slides]. City of Berkeley. https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/Item%2003f%20Finance%20FY25-26%20Department%20Budget%20Presentation.pdf

[6] Information Technology Department. (2024, May 8). Proposed Budget Fiscal Years 2025 & 2026: Information Technology. [PowerPoint slides]. City of Berkeley. https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/Item%2003e%20IT%20FY25-26_Department%20Budget%20Presentation.pdf

[7] Department of Health, Housing, and Community Services. (2024, May 8). Proposed Budget Fiscal Years 2025 & 2026: Health, Housing and Community Services. [PowerPoint slides]. City of Berkeley. https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/Item%2003b%20HHCS%20FY25-26%20Department%20Budget%20Presentation.pdf

[8] *How gen Z is changing the conversation around mental health at work*. Handshake. (2024, May 21). https://joinhandshake.com/blog/network-trends/gen-z-mental-health-at-work/

[9] Schabram, K., Bloom, M., & DiDonna, D. (2023, February 23). Research: The Transformative Power of Sabbaticals. Harvard Business Review. https://hbr.org/2023/02/research-the-transformative-power-of-sabbaticals

[10] Schabram, K., Bloom, M., & DiDonna, D. *Our research*. The Sabbatical Project. (n.d.). https://thesabbaticalproject.org/research/

PEU 24.10:[11]

> After eight (8) consecutive years of employment with the City, an employee may apply for a sabbatical leave without pay for up to six (6) months. Such leave may be granted by the appropriate authority upon the recommendation of the employee's department head but such leave shall not be unreasonably denied. There shall be no requirement that the employee exhaust paid leave balances prior to such sabbatical leave. Life and Health insurances shall be paid by the City for the duration of an approved Sabbatical Leave.
>
> Every Sabbatical Leave shall require an employee commitment of two (2) years service following return from leave. In the event the full two year service commitment is not performed, the employee shall repay a pro rata amount of the life and health insurance premium paid by the City during the sabbatical leave based on the percentage of the two year service commitment not performed.

SEIU/CSU 1021 24.4:[12]

> After eight (8) consecutive years of employment with the City, an employee may apply for a sabbatical leave without pay of up to six (6) months. Sabbatical leave is not intended to be used for the six-month period immediately prior to retirement. . . . There shall be no requirement that the employee exhaust paid leave balances prior to such sabbatical leave. Life and Health insurance shall be paid by the City for the duration of an approved Sabbatical Leave. For employees who fail to return to work at the expiration of the approved Sabbatical Leave or fail to return for the equivalent amount of time he or she was approved for Sabbatical Leave, such employee shall reimburse the City or the City may deduct the cost of the Health and Life Insurance premiums paid by the City on behalf of the employee from the employee's payout of their accrued leave balance due at termination.

Berkeley's Strategic Plan identifies the long-term goals and short-term priorities that the City government will focus on to benefit the Berkeley community. One of these key priorities includes attracting and retaining a talented and diverse City government workforce.[13] The recommendations in this item support that key strategic goal.

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[11] City of Berkeley, Public Employees Union - Local One. (29 July, 2021). Memorandum of Understanding between City of Berkeley and Public Employees Union - Local One. https://berkeleyca.gov/sites/default/files/documents/PEULocal1MOU.pdf

[12] City of Berkeley, Service Employees International Union Local 1021. (29 July, 2021). Memorandum Agreement between City of Berkeley and Service Employees International Union Local 1021. https://berkeleyca.gov/sites/default/files/documents/SEIU-CSU-Local1021-MOU.pdf

[13] *Strategic plan*. City of Berkeley. (n.d.). https://berkeleyca.gov/your-government/our-work/strategic-plan

ACTIONS/ALTERNATIVES CONSIDERED
The City has employed various traditional tactics to attract new talent. However, despite some success, most City departments continue to struggle with high vacancy rates. With fewer dedicated employees, the City will struggle to achieve its strategic goals, administer forward-thinking programs and initiatives, and serve the community.

RATIONALE FOR RECOMMENDATION
Our staff are the City of Berkeley's greatest assets. Many employees are experts in their field and provide indispensable services. A report from the City Auditor titled "Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring," recommended the City take additional steps to address employee dissatisfaction and detailed several key findings including:[14]

- ***Berkeley's staff shortages constrained city services***, but the City did not have a clear strategy to improve retention during our audit period. ***More employees left the City than were hired in each year*** of the audit period, contributing to the staff shortage.

- Employee dissatisfaction made it harder for the City to retain staff. Surveyed employees reported dissatisfaction with workloads, professional development opportunities, pay, and communication and support from city leadership.

IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT
The City Manager should review studies and expert opinions about sabbatical policies and their potential structures, review the City's two existing sabbatical leave policies, consult with labor and employees, and return to the City Council a report including the costs/benefits of adopting a policy for all City of Berkeley employees. Evaluation of satisfaction with the two existing policies can provide additional information. Additionally, before official adoption of any policy, the City Manager should study the fiscal impacts and feasibility of providing paid or partially paid sabbatical leave.

Because this referral is for a study, and no implementation will take place until further Council action, this referral does not include discussion of how a potential Sabbatical Leave policy could be implemented and administered.

ENVIRONMENTAL SUSTAINABILITY
N/A

[14] Wong, J., Palmer, C., Mullin, E., Kuechle, K., & Miller, P. (2023, June 22). Staff Shortages: City Services Constrained by Staff Retenion Challenges and Delayed Hiring. Berkeley City Auditor. https://berkeleyca.gov/sites/default/files/documents/Staff%20Shortages%20--%20City%20Services%20Constrained%20by%20Staff%20Retention%20Challenges%20and%20Delayed%20Hiring_0.pdf

FISCAL IMPACTS
Currently, the limited sabbatical leave options offered to certain City employees are partially benefitted, but unpaid. There are costs to the organization even when an unpaid Sabbatical Leave is taken, including extra work for colleagues, and the potential need for short term fill-in labor. This item asks the City Manager to evaluate the costs of adopting a city-wide paid, partially paid or unpaid sabbatical leave policy, and return to Council to report on the benefits and costs of such a policy

OUTCOMES AND EVALUATION
The City Manager should periodically consult with labor partners to learn why employees have or have not taken/considered taking advantage of the City's Sabbatical Leave policy. A study of employees who have taken Sabbatical Leave should consider whether employees are reporting higher levels of satisfaction following their leave, and how it impacts their interest in staying with the City for the long term. The City Manager's report should include some metrics to evaluate whether a policy that may be adopted successfully meets the policy's goals.

CONTACT
Councilmember Sophie Hahn, (510) 981-7150

**Berkeley City Councilmember**
**Mark Humbert, District 8**
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
mhumbert@berkeleyca.gov

**02a.19**

CONSENT CALENDAR
April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Councilmember Humbert (Author)

Subject: Music in the Elmwood Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

## RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed $1,000 per Councilmember including $1,000 from Councilmember Humbert to the Elmwood Business Association for the Music in the Elmwood Festival on Sunday, May 4, 2025 with funds relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Councilmember Humbert and any other Councilmembers who would like to contribute.

## BACKGROUND

People are increasingly taking note of the Music in the Elmwood Festival, which is now in its second year and continues to grow in scale. Music festivals help build a strong economic bass for our business districts, and we hope to see a sharp increase in attendance. It's hard to beat a free music event that's fun for the whole family, and we want to support the Elmwood Business Association's instrumental role in this event. Neighborhood festivals like this are a cymbal of our community's vitality. These funds will drum up financial support and ensure that Music in the Elmwood crescendos for years to come.

## FINANCIAL IMPLICATIONS

No General Fund impact. $1,000 is available from Councilmember Humbert's office budget discretionary account.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

## CONTACT PERSON

Councilmember Mark Humbert Council District 8 510-981-7180

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

MUSIC IN THE ELMWOOD FESTIVAL 2025

WHEREAS, people are increasingly taking note of the Music in the Elmwood Festival, which is now in its second year and continues to grow in scale; and

WHEREAS, music festivals help build a strong economic bass for our business districts, and we hope to see a sharp increase in attendance; and

WHEREAS, it's hard to beat a free music event that's fun for the whole family, and we want to support the Elmwood Business Association's instrumental role in this event; and

WHEREAS, neighborhood festivals like this are a cymbal of our community's vitality; and

WHEREAS, These funds will drum up financial support and ensure that Music in the Elmwood crescendos for years to come; and

WHEREAS, Councilmember has surplus funds in his office expenditure account, which would be key to the event; and

WHEREAS, the Elmwood Business Association is making a play for funds in the amount of $1,000 to help cover the costs of the festivities; and

WHEREAS, working in concert for this event would serve the civic interests of community-building, supporting musicians, and trumpeting Berkeley's cultural influence;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Councilmembers from their Council Office Budgets up to $1,000 per office shall be granted to the Elmwood Business Association for helping cover the costs of the Music in the Elmwood Festival.

# 02a.20

ACTION CALENDAR
April 15, 2025

**To:** Honorable Mayor and Members of the City Council

**From:** Police Accountability Board (PAB)

**Submitted by:** John "Chip" Moore, Chair of the Police Accountability Board

Hansel A. Aguilar, Director of Police Accountability

**Subject:** Berkeley Police Department Texting Offences: An Independent Investigation by the Police Accountability Board

## RECOMMENDATION

The Police Accountability Board formally recommends to the City Council that it:

1. Pass an ordinance or otherwise affirm the Police Accountability Board's ability to access documents and records in furtherance of its central accountability function, consistent with Charter Amendment Section 125.
2. Adopt a robust resolution ensuring full and meaningful accountability for sworn officers—whether on-duty or off-duty—who engage in misconduct of any kind, but especially actions or expressions of racial or other types of bias.
3. Direct the City Manager to work with the Berkeley Police Department, Police Accountability Board, and the Office of the Director of Police Accountability to create a public repository to fulfill the vision of California Penal Code Section 832.7(b)(1), allowing for transparency in cases of sustained allegations of officer racism or other discriminatory conduct or expression.
4. Call on California state legislators to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code (Section 41600 – 41603).

## POLICY COMMITTEE RECOMMENDATION

On February 25, 2025, the Public Safety Policy Committee adopted the following action: M/S/C (Kesarwani/O'Keefe) to send item to City Council with a negative recommendation. Vote: All Ayes.

## SUMMARY

In accordance with City Charter Section 125(17)(a), the City of Berkeley Police Accountability Board's Subcommittee on Policy and Practices conducted an examination of policies, practices, and procedures within the Berkeley Police Department (BPD) concerning the Downtown Task Force (DTF) and Bike Unit allegations.

A Special Meeting of the PAB was convened on November 15, 2022, where the Board voted to establish a subcommittee to review all policies and practices related to the allegations made by former BPD Officer Corey Shedoudy, which were made public on November 10, 2022. The subcommittee, initially chaired by former Board Member Cheryl Owens and later by Board Member Kitty Calavita following Owens' resignation, also included PAB Chair John (Chip) Moore. The allegations involved racist text messages, bias against the unhoused, and pressure to meet arrest quotas, with the Sergeant of the DTF implicated.

Despite the PAB's authority under Section 125(3)(a) of the City Charter to access departmental records without redaction or limitation, the subcommittee encountered numerous obstacles in obtaining the necessary materials. This review revealed several areas where BPD policies and practices did not meet best practices, policy, or legal standards. Specifically, the findings included:

- Expectations to achieve certain arrest numbers.
- Exchange of racially charged and discriminatory text messages among DTF officers.
- Use of personal cellphones for discussing work-related matters.
- Essentially unlimited overtime for DTF officers.
- Vague or absent policies in critical areas that could lead to legal violations or undermine fair policing.
- Insufficient knowledge of BPD policies and State law among some DTF members.

The Board's preliminary recommendations for improving BPD policies and practices include:

- Establishing a new policy prohibiting formal or informal arrest quotas.
- Ensuring fair enforcement of stay-away orders in accordance with State law.
- Increasing training on BPD policies and State law.
- Revising policies related to Fair and Impartial Policing, Standards of Conduct, Early Warning System, Employee Speech, Expression and Social Networking, Personal Communication Devices, and Overtime Compensation Requests.

Additionally, the PAB recommends that the City Council:

- Pass an ordinance in line with Charter Amendment Section 125(3)(a)(7) to enable the PAB to self-initiate investigations of potential misconduct and access internal records for such investigations.
- Adopt a resolution to ensure comprehensive accountability for officers who engage in misconduct, consistent with the City's 2024 State and Federal Legislative Agenda.
- Direct the City Manager to collaborate with the BPD, PAB, and Office of the Director of Police Accountability to establish a public repository, as envisioned by California Penal Code Section 832.7(b)(1), to ensure transparency regarding sustained findings of discriminatory conduct.
- Advocate for state legislators to extend the prohibition on arrest quotas, currently limited to the California Vehicle Code (Section 41600–41603), to encompass all California law enforcement activities.

This report aims to not only highlight deficiencies in BPD policies and practices but also to offer concrete recommendations for addressing these issues. Achieving these goals will require the collective efforts of the PAB, BPD leadership, the City Manager, and the City Council. Through this report, the PAB reaffirms its commitment to collaboration, justice, fairness, trust, and community safety.

In support of these objectives, the ODPA submits a complementary report to provide additional information related to the PAB's findings, in accordance with Chapter VI, Section C.1. of the City of Berkeley's Commissioner's Manual.

The PAB initially submitted this report to the City Council for presentation at the October 1, 2024 Regular Meeting but was deferred to the Public Safety Committee[1]. During the PAB meeting on September 25, 2024, the PAB voted to request the withdrawal of the item[2], a request that was granted by the Public Safety Committee.

## FISCAL IMPACTS OF RECOMMENDATION

Implementing the PAB's recommendations will incur costs related to staff time, technology requirements, and maintenance of such technology.

## CURRENT SITUATION AND ITS EFFECTS

On November 10, 2022, Corey Shedoudy, a former member of the Berkeley Police Department's (BPD) Downtown Task Force and Bike Unit (DTF), alleged that the DTF had arrest quotas and used questionable legal tactics, such as "stop and frisk," probationary searches without reasonable suspicion, and a broad interpretation of stay-

[1] September 26, 2024 Agenda & Rules Committee Special Meeting Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/09-16%20Minutes%20-%20Agenda%20Committee.pdf

[2] The motion carried with 6 ayes in favor, 0 noes, and 2 PAB members absent. Police Accountability Board Regular Meeting Minutes for September 25, 2024: [link]

away orders from UC Berkeley. To support his claims, Officer Shedoudy provided a series of text messages from the DTF that contained derogatory comments about homeless individuals and people of color.

In response to these allegations, the PAB began a policy review on November 15, 2022, exercising its authority under Section 125(17)(a) of the Berkeley City Charter. A subcommittee was formed to examine the policies and practices related to the allegations. In December 2022, the City of Berkeley retained the law firm Swanson & McNamara to investigate the claims. During this investigation, the text messages provided by Mr. Shedoudy were authenticated.

## BACKGROUND

The purpose of the PAB is to promote public trust through independent, objective civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and offer a means for prompt, impartial, and fair investigations of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

## RATIONALE FOR RECOMMENDATION

Accepting the recommendations from the Police Accountability Board will improve public trust by enhancing transparency and accountability within the Berkeley Police Department. Implementing these recommendations will strengthen oversight in the city, allowing the Board to fulfill its intended purpose effectively.

## CONTACT PERSON

Hansel A. Aguilar, Director of Police Accountability

Office of the Director of Police Accountability, (510) 981-4950

Attachments:

1: PAB Report “Berkeley Police Department Texting Offences: An Independent Investigation by the Police Accountability Board”

2: ODPA Companion Report “Companion Report to Berkeley Police Department Texting Allegations An Independent Investigation by the Police Accountability Board”

# Berkeley Police Department Memorandum

From: Chief Jennifer Louis Date: 2/18/2025

To: Berkeley City Council Public Safety Policy Committee

Subject: Berkeley Police Department Response Regarding the Police Accountability Board and Office of the Director of Police Accountability 2024 Texting Offenses Reports

The Berkeley Police Department (BPD) has reviewed the recent reports and their accompanying recommendations from the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) responding to the independent investigation completed by Swanson & McNamara into text exchanges among BPD officers on the bike team. It is important to note that neither the PAB nor ODPA reports dispute the findings of the independent investigation; rather, they offer recommendations based on their review of the report.

The Department remains committed to robust oversight and accountability in the performance of our core services. BPD must therefore carefully assess all recommendations to ensure they are warranted and appropriate and their benefits justify any cost and potential disruption to the provision of public safety services. We appreciate the opportunity to clarify our positions and explain how current practices address many of the concerns raised.

## PAB Recommendations to the Department

The PAB report calls for revisions to several key policies as well as increased training on laws and policies. The ODPA companion report does not make recommendations directly to the police department.

### *Policy Updates*

**PAB Recommendation:**

- Revise key policies including:
    a. Fair and Impartial Policing (Policy 401)
    b. Personal Communication Devices (Policy 701)
    c. Employee Speech, Expression, and Social Networking (Policy 1029)
    d. Early Warning System (Policy 1041)
    e. Standards of Conduct (Policy 321)
    f. Overtime Compensation (Policy 1019)
    g. Adopt a standalone policy prohibiting formal or informal arrest quotas.

**BPD Response:**

BPD is actively collaborating with the PAB on a number of policy reviews initiated by the PAB. Additionally, the department is preparing to implement a next-generation Early Intervention System (EIS) platform to strengthen our existing EIS process and further enhance oversight. Over the course of the last several years, a number of the above policies have been updated, as BPD worked to complete Council recommendations related to fair and impartial policing, City Auditor recommendations regarding overtime, and our process to convert departmental General Orders to Lexipol Policies.

The Charter empowers the PAB to initiate reviews and propose specific policy amendments, and we welcome any detailed proposals. We remain committed to continuous improvement, and making thoughtful, intentional,

and productive policy updates is a critical responsibility for the BPD that requires significant staff time and is undertaken only when it aligns with our departmental mission as well as our core commitment to public safety and operational efficiency. We currently have no additional substantive policy changes planned from the list provided.

### *Training and Oversight*

**PAB Recommendation:**

- Increase training on state laws, stay-away orders, and internal policies. Implement clearer accountability mechanisms for policy enforcement.

**BPD Response:**

The department's Policy and Training Unit ensures that all officers understand state laws and internal policies through comprehensive and ongoing training programs. Our training needs are continuously driven by legal mandates, timely legal updates, data analysis, audits, and early intervention efforts. These mechanisms ensure that we are providing training exactly where it is needed. Currently, review of the independent investigation as well as our internal assessments show that our existing training adequately addresses these standards and no additional training measures regarding stay-away orders are warranted at this time.

## Additional Considerations

A range of additional recommendations from the PAB and ODPA are directed to the City Council, City Manager and the community to further manage our law enforcement practices. The Department would like to provide the Public Safety Policy Committee additional background to assist as helpful with a deeper understanding of the key issues and needs.

Key themes emerging from these proposals include:

- **Expanded Access and Transparency:**
  - The reports articulate proposals to expand the PAB's authority to access unredacted internal records (under Charter Section 125) and to create a public database for sustained misconduct findings. It is important to note that there is an ongoing dialogue between the City and the Berkeley Police Officer's Association regarding the scope of PAB access as part of the process to establish PAB's Permanent Regulations for handling Investigations and Complaints. Currently, we continue to rely on Charter Provisions, existing PAB's Temporary Regulations as well as public record procedures, all which balance transparency with considerations for community member and officer privacy rights.
- **Accountability and Legislative Adjustments:**
  - A number of recommendations address accountability for officer misconduct—including both on- and off-duty behavior—and call for resolutions or legislative changes (such as extending the prohibition of arrest quotas to all law enforcement activities). Our current policies are designed to meet these accountability goals, and any proposed amendments would need to be weighed against broader policy priorities and fiscal implications.
- **Operational Enhancements and Oversight Mechanisms:**
  - Several proposals suggest operational improvements such as real-time audits of body-worn camera footage, revised protocols for handling complaints against the police chief, and the

# Berkeley Police Department Memorandum

development of a comprehensive communications policy during investigations. Our established oversight processes already provide multiple layers of review and safeguard public communications. These suggestions would require serious trade-offs regarding funding, administrative processes, and the balance of oversight responsibilities between existing bodies (such as the City Manager's Office and the Chief of Police).

- **External Assessment and Accreditation:**
  - The reports express interest in evaluating the potential benefits of external assessment tools—including law enforcement accreditation and standardized performance metrics—to supplement our robust internal oversight systems. While external evaluations may offer additional insights, they also involve significant administrative requirements and must be considered in the context of Berkeley's unique operational, administrative and oversight environment.
- **Additional Proposals and Considerations:**
  - Other recommendations touch on topics such as randomized audits of city-issued devices, the formulation of an alcohol rehabilitation leave policy, and Charter amendments to expand investigative authority or secure independent legal counsel for oversight agencies. Each of these proposals carries distinct operational and fiscal trade-offs that should be properly weighed.

Our department remains committed to effective oversight, accountability, and continuous improvement. We believe these efforts must be rooted in our core departmental priorities and established practices to enhance public safety and operational efficiency. To that end, many of the proposals in these reports will require further stakeholder engagement, clear funding sources, and alignment with existing practices to ensure they don't interrupt our ability to deliver our core services at the high standard set by Council, the community, and ourselves.

## Conclusion

We remain committed to working collaboratively with the PAB, ODPA, and all stakeholders to ensure that our policies and practices continue to support public safety and fair, effective law enforcement. Our department will continue to engage in dialogue as these issues evolve.

Thank you for your attention to this response.

Cc:

Paul Buddenhagen, City Manager

Hansel Aguilar, Director of Police Accountability

Josh Cayetano, Police Accountability Board Chair

Mark Numainville, City Clerk

# BERKELEY POLICE DEPARTMENT TEXTING OFFENCES

An Independent Investigation by the Police Accountability Board

**Prepared by:**

Police Accountability Board
City of Berkeley, CA

Approved by the PAB on July 10, 2024

**MAYOR**
Jesse Arreguín

**CITY COUNCIL**

Rashi Kesarwani, District 1
Terry Taplin, District 2
Ben Bartlett, District 3
Igor Tregub, District 4
Sophie Hahn, District 5
Susan Wengraf, District 6
Cecilia Lunaparra, District 7
Mark Humbert, District 8

**City Manager**
LaTanya Bellow, Interim City Manager

**Berkeley Police Department**
Jennifer Louis, Chief of Police

**POLICE ACCOUNTABILITY BOARD (PAB) MEMBERS**
John "Chip" Moore, Chair
Leah Wilson, Vice-Chair
Brent Blackaby
Kitty Calavita
Joshua Cayetano
Juliet Leftwich
Alexander Mozes
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Lucky, Therapy Animal

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## PREFACE

On November 10, 2022, Officer Corey Shedoudy, a former member of the Berkeley Police Department's (BPD) Downtown Task Force and Bike Unit (DTF)[1], claimed the DTF maintained arrest quotas and employed questionable legal tactics including "stop and frisk, probation searches without reasonable suspicion of a crime, and a broad interpretation of stay-away orders from UC Berkeley."[2]

The allegations and the explicitness of those texts jolted the Berkeley community and its political leaders. Subsequently, the City hired an outside law firm to investigate the authenticity of the texts and their implications. The texts were ultimately authenticated.

The community shock produced by these egregious sentiments and conduct by sworn BPD officers was compounded by the realization that this behavior was only publicly known because a terminated member of the Department exposed it more than two years after the fact. The Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) recognize and respect the hurt and suffering these expressions of apparent racism and disdain for the unhoused elicited in the community, particularly among those who are directly affected by such discriminatory attitudes and behaviors.

We are deeply troubled by these events. The PAB is designed to be a bridge between the community, the BPD, and the City leadership. Most importantly, however, it was established to ensure accountability, trust, and transparency. According to Section 125(1) of the Berkeley City Charter, the purpose of the PAB "is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department…".[3]

The goal of this report is to fulfill that obligation to the Berkeley community. The PAB lacks the authority to independently initiate investigations into alleged misconduct by individual DTF members or to recommend discipline without a complaint being filed with the ODPA within 180 days of the incident.[4] Instead, this report is mostly forward-looking in the hopes that policy and practices reforms, coupled with rigorous oversight, can restore trust and help prevent future misconduct.

Restoring trust and helping prevent misconduct through robust oversight is not only the morally right thing to do; it is the fiscally responsible thing as well. According to

[1] The Downtown Task Force began operations in October 2019. In July 2020, it transitioned into a Bike Unit. The term "Downtown Task Force" or "DTF" will be used in this report to designate the unit from its beginning in October 2019.

[2] Email send by Former Officer Shedoudy to the Berkeley City Council: https://static1.squarespace.com/static/5edeeebc3032af28b09b6644/t/63725d28d35f087529c42dda/1668439336808/Shedoudy+email+11-10-22.png

[3] Berkeley City Charter Section 125(1): https://berkeley.municipal.codes/Charter/125(1)

[4] Interim Regulations for Handling Complaints Against Sworn Officers of the Police Department, Section II.3.: https://berkeleyca.gov/sites/default/files/2022-02/PAB-ODPA.Interim.Regs_.Approved.2021-10-05.pdf

documents provided by the City Attorney's office, over the last decade the City of Berkeley has had to respond to 471 legal claims related to BPD activities, costing the City $1,978,953, with more than $1,300,000 of this incurred in the last five years. The two most costly categories of liability were "excessive force" ($558,151) and "false arrest" ($338,551).

Reforms will involve not only changes in BPD policy and practice, but City Council action, robust accountability demanded from the BPD leadership, and ongoing efforts by the PAB to ensure full-bodied enforcement of all policies. Changes in law-on-the-books in the form of policy reforms will amount to nothing in the absence of changes in law-in-action, as policing ultimately takes place on the ground. Deterring the kind of behavior that was alleged by former Officer Shedoudy, and that uniformly offended the Berkeley community and eroded public trust, is a daunting challenge. It is achievable only if all hands are on deck.

## EXECUTIVE SUMMARY

In accordance with City Charter Section 125(17)(a)[5], the City of Berkeley Police Accountability Board's Subcommittee on Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations conducted an examination of policies, practices, and procedures within the Berkeley Police Department concerning matters related to that unit.

A Special Meeting of the PAB was called on November 15, 2022, at which the Board voted to form a subcommittee to do a policy review of all policies and practices relating to Mr. Shedoudy's allegations[6]. The subcommittee was comprised of former Board Member Cheryl Owens, PAB Chair John (Chip) Moore, and Board Member Kitty Calavita, and was initially chaired by Board Member Owens. When Board Member Owens resigned from the Board, the subcommittee was Chaired by Board Member Calavita.[7] The impetus for the review was the set of allegations brought forth by former Berkeley Police Department (BPD) Officer Corey Shedoudy and made public on November 10, 2022. Mr. Shedoudy alleged that text messages expressing racist attitudes, bias against the unhoused, and pressure to meet arrest quotas, had been sent among members of the DTF, with the Sergeant of the DTF playing a central role.

[5]Berkeley City Charter Section 125(17)(a): https://berkeley.municipal.codes/Charter/125(17)(a)

[6] Meeting Minutes for the PAB's Regular meeting on November 15, 2022: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/cc.2022-11-15%20SpecMtg.approved.minutes%20%281%29.pdf

[7] On July 7, 2023, the ODPA received a policy complaint from a member of the public (DPA Case #2023-PR-0004) regarding the allegations of the DTF's arrest quotas and bias against people of color and the unhoused. At their regular meeting on September 27, 2023, the PAB voted to refer that policy complaint to this subcommittee since its work was well underway and responds (to the extent possible) to the issues raised in the complaint.

The PAB faced multiple challenges in accessing the materials necessary for its review, notwithstanding Section 125(3)(a) of the City Charter, which gives the PAB the "powers and duties...to access records of City Departments"[8], including "without redaction or limitation" records relating to policies and practices, disciplinary records, and internal investigative records [9] . The PAB Subcommittee spent many months of critical investigative time seeking—in some cases successfully, in other cases unsuccessfully—to overcome barriers to access that had ostensibly been removed by these sections of the Charter Amendment.

This review identifies key areas where the BPD fell short of best practices, existing policy and/or legal requirements. Specifically, the Board found:

- There were expectations to reach certain arrest numbers;
- BPD officers assigned to the DTF exchanged racially charged and discriminatory text messages;
- These BPD officers routinely used personal cellphones to discuss work-related matters;
- Overtime for DTF officers was essentially unlimited;
- Some BPD policies were vague or non-existent in subject areas that could prevent violations of law or compromise fair and impartial policing;
- There was insufficient knowledge of specific BPD policies and State law among some DTF members;

The Board's preliminary recommendations regarding BPD policies and practices include:

- Establishing a new freestanding policy prohibiting formal or informal arrest quotas;
- Ensuring that stay-away orders are enforced fairly and consistent with State law;
- Increasing training on BPD policies and State law; and
- Making changes to BPD policies regarding Fair and Impartial Policing (#401)[10]; Standards of Conduct (#321)[11]; the Early Warning System (#1041)[12]; Employee

[8] Berkeley City Charter Section 125(3)(a): https://berkeley.municipal.codes/Charter/125(3)(a)(5)
[9] Berkeley City Charter Section 125(20)(a): https://berkeley.municipal.codes/Charter/125(20)(a)
[10] BPD Policy 401 "Fair and Impartial Policing": https://berkeleyca.gov/sites/default/files/2022-02/PAB-ODPA.Interim.Regs_.Approved.2021-10-05.pdf#page=321
[11] BPD Policy 321 "Standard of Conduct": https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#page=189
[12] BPD Policy 1041 "Early Warning System": https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#page=903

Speech, Expression and Social Networking (#1029)[13]; Personal Communication Devices (#701)[14]; and Overtime Compensation Requests (#1019).[15]

The PAB further recommends that City Council:

- Pass an ordinance, consistent with Charter Amendment Section 125 (3)(a)(7)[16], to allow the PAB to self-initiate investigations of potential misconduct and to access internal records in furtherance of those investigations. While policy reviews are important, it is at least as important to provide oversight of their implementation and practices on the ground.
- Adopt a robust resolution to ensure a full and meaningful accountability of sworn officers who engage in misconduct, whether on-duty or off-duty, consistent with the City's 2024 State and Federal Legislative Agenda to "support efforts to increase peace officer accountability…".[17]
- Direct the City Manager to work with the BPD, PAB and ODPA to create a public repository to fulfill the vision of California Penal Code Section 832.7(b)(1)[18], including but not limited to 832.7(b)(1)(D) which states that an exception to peace officer confidentiality is required for "any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status."
- Encourage state legislators to extend the prohibition on arrest quotas, both formal and informal, in the Penal Code, which is currently limited to the California Vehicle Code (Section 41600-41603)[19], to include all California law enforcement activity.

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[13] BPD Policy 1029 "Employee Speech, Expression and Social Networking": https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#page=860

[14] BPD Policy 701 "Personal Communication Devices": https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#page=584

[15] BPD Policy 1019 "Overtime Compensation Request": https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#page=827

[16] Berkeley City Charter 125(3)(a)(7): https://berkeley.municipal.codes/Charter/125(3)(a)(7)

[17] City of Berkeley's 2024 State and Federal Legislative Platform. February 13, 2024

[18] California Penal Code Section 832.7: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=832.7.&lawCode=PEN

[19] California Vehicle Code Section 41600 – 41603: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=17.&title=&part=&chapter=7.&article=

Our intent is not only to identify specific shortcomings in BPD policies and practices but to provide concrete steps toward rectifying them. This will require collective efforts by the PAB, the BPD and its leadership, the City Manager, and City Council. Through this report, the PAB reaffirms its commitment to the principles of collaboration, justice, fairness, trust, and community safety.

## BACKGROUND

On November 10, 2022, former BPD Officer Corey Shedoudy who had been a member of the DTF but was terminated for misconduct, wrote to the Berkeley City Council alleging that text messages expressing racist attitudes, bias against the unhoused, and pressure to meet arrest quotas, had been sent among members of the DTF, with Sergeant Darren Kacalek playing a central role. The allegations included screenshots of the alleged texts.

On November 14, 2022, Secure Justice Executive Director Brian Hofer urged the California Attorney General to investigate the BPD arrest quota allegation.[20] Shedoudy's claims continued to attract extensive media and public attention. The Los Angeles Times, San Fransisco Chronicle, Berkeleyside, East Bay Times, and other media outlets all devoted space to the allegations.[21]

On November 17, 2022, the Center for Policing Equity, which had been hired by the City in 2015 to study potential racial disparities in BPD stops (a report presented to the City in 2018), issued a blunt 3-page statement in response to Shedoudy's allegations. It began, "The Center for Policing Equity is appalled by the views, actions, and frank disregard for public safety revealed in a series of leaked group chats among officers

[20] Article: "Secure Justice Calls for Attorney General Investigation into BPD Arrest Quota Policy": https://secure-justice.org/blog/secure-justice-calls-for-attorney-general-investigation-into-bpd-arrest-quota-policy

[21] Article: Berkeley Police Department in turmoil over leaked texts about arrest quotas - Los Angeles Times (latimes.com): https://www.latimes.com/california/story/2022-11-17/berkeley-police-department-in-turmoil-over-leaked-texts-about-arrest-quotas ; Article: Head of Berkeley police union on leave following text message scandal, claims of arrest quotas (sfchronicle.com): https://www.sfchronicle.com/eastbay/article/Report-Head-of-Berkeley-police-union-on-leave-17590377.php ; Article: Leaked texts from Berkeley police union leader show 'disturbing' comments (berkeleyside.org): https://www.berkeleyside.org/2022/11/14/berkeley-police-text-messages-darren-kacalek-bpa ; Article: Berkeley Police Department, Interim Chief will be investigated after ex-police officer leaked texts alleging racist, illegal behavior (eastbaytimes.com): https://www.eastbaytimes.com/2022/11/16/berkeley-police-department-interim-chief-will-be-investigated-after-ex-police-officer-leaked-texts-alleging-racist-illegal-behavior/:; Article: Berkeley police officers' 'anti-homeless' text messages probed | KRON4https://www.kron4.com/news/bay-area/berkeley-police-officers-anti-homeless-text-messages-probed/; Article: Leaked Text Messages Prompt Push to Delay New Police Chief in Berkeley – NBC Bay Area: https://www.nbcbayarea.com/news/local/east-bay/berkeley-police-text-messages-jennifer-louis/3078376/; Article: Fired Berkeley cop leaks texts alleging bias, quotas (berkeleyscanner.com): https://www.berkeleyscanner.com/2022/11/15/policing/fired-berkeley-cop-leaked-texts-corey-shedoudy/

serving with the Berkeley, California Police Department (BPD)."[22] The statement went on to characterize the texts as including "vile dehumanization" of the unhoused and "openly racist" views. It concluded, "The burden is now on the City of Berkeley and BPD to act with appropriate urgency in addressing these revelations, the institutional culture informing them, and their dire implications for Berkeley's residents."[23]

The City Council was poised to vote on appointing Interim BPD Chief Jen Louis as permanent Chief on November 15, 2022, but the vote was postponed in the context of the allegations, including a claim that then Captain Louis knew of, and ignored, the alleged misconduct. The Mayor and Council Members noted that the appointment should be put on hold pending an investigation into the allegations, and the City Manager withdrew the item.[24]

In December 2022, the law firm of Swanson & McNamara was hired by the City of Berkeley[25] to investigate. That investigation took the place of an investigation by the Internal Affairs Bureau of the BPD to dispel the perception of a conflict of interest in the context of the possibly wide-ranging nature of the inquiry.

The allegations that Swanson & McNamara was tasked with investigating included the following claims made by Mr. Shedoudy:

1. Allegations of an "unethical and illegal practice of arrest quotas of downtown unhoused ordered by [name] to DTF/Bike Force," which purportedly commenced when Chief Louis held the position of BPD Police Captain and persisted after her appointment as Interim Chief.
2. Assertions that the DTF/Bike Force was instructed to make 100 arrests per month.
3. Claims of meeting the alleged quota through questionable legal tactics, including stop and frisk, probation searches without reasonable suspicion, and "a very loose interpretation of stay-away orders from UC Berkeley".
4. Criticisms of Captain Louis's perceived inaction.

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[22] Statement on Leaked Text Messages out of Berkeley Police Department: https://policingequity.org/newsroom/official-statements/statement-on-leaked-text-messages-out-of-berkeley-police-department

[23] Center for Policing Equity, 2022. https://policingequity.org/newsroom/official-statements/statement-on-leaked-text-messages-out-of-berkeley-police-department.

[24] On May 9, 2023, prior to conclusion of the investigations into the DTF texting allegations, City Manager Dee Williams-Ridley once again forwarded to City Council her selection of Interim Chief Louis as permanent Chief, and Council voted to appoint her.

[25] See Appendix 1: City of Berkeley Contract for services with Swanson & McNamara LLP, Vendor Contract #32300109 https://records.cityofberkeley.info/PublicAccess/api/Document/AU3fuyqXQXXZ%C3%81TG8am4tuCPyplZzCFLJZsbxFqBxmJ3aQZTBcxS%C3%89E7ECp9r6A30gZuhAImseUFcNLLtKRrEId7g%3D/

5. Allegations of "illegal arrest quotas, racism, evidence suppression, lying, and quid pro quos" supported by various forms of evidence, such as text messages, emails, sworn testimony transcripts, public arrest records, and photographs.

To investigate these claims, the Swanson team submitted Mr. Shedoudy's phone to a third-party vendor for data extraction, including text communications among DTF and/or Bike Unit members from October 1, 2019, to approximately March 1, 2023. The authenticity of each message was confirmed, except for one located on page 3 of Shedoudy's allegations letter, which could not be found on the phone.

The Swanson team also reviewed data on arrests made by DTF and Bike Unit officers from October 1, 2019 through November 22, 2020. This timeframe corresponded with Shedoudy's tenure in the DTF and Bike Unit, and involved review of 481 randomly selected arrest reports, accounting for over 50% of the total.

Additionally, internal Department message board posts concerning DTF activities were gathered and reviewed by Swanson's team, covering the period from November 6, 2019, to March 24, 2020. The investigation also included interviews with former Officer Shedoudy and members of the DTF, as well as with Chief Louis.

The Swanson & McNamara investigative report was completed in June 2023. Those findings have not been made public. A summary of the findings, however, revealed that the text messages expressing racist attitudes, animosity towards the unhoused, and pressure to achieve a certain number of arrests, were authenticated by forensic analysis of former Officer Shedoudy's phone.

While the Swanson & McNamara report was deemed confidential consistent with California Penal Code Section 832.7, the Berkeley Scanner[26] quoted City spokesperson Matthai Chakko that "the investigation found that the department does not have a practice of racial bias," that "the department does not have any arrest quotas," and that the department follows all state laws and the constitution. Berkeleyside also published an article summarizing the City spokesperson's report: "According to city spokesperson Matthai Chakko," the article read, "Swanson and McNamara's investigation found that: the department does not have a practice of racial bias; the department does not have any arrest quotas; the department follows state law and constitutional law…; and the department has existing policies that prohibit discrimination and harassment of protected classes."[27]

This summary of the Swanson findings drew conclusions about the department as a whole and its official policies that went beyond any findings of the investigator whose

[26] Article: Berkeley police bike team cleared of claims made by fired cop (berkeleyscanner.com): https://www.berkeleyscanner.com/2023/07/20/policing/berkeley-police-bike-team-cleared-systemic-problems/
[27] Article: Berkeley police texts probe found no quotas or racial bias, city says (berkeleyside.org): https://www.berkeleyside.org/2023/07/20/berkeley-police-text-scandal-investigation

task and method were to focus on specific practices of the Downtown Task Force and Bike Unit in a limited period of time. The findings of the Swanson team eroded public trust because they were not made public—other than the authenticity of the text messages—and because these overly general statements by the City spokesperson were made in piecemeal fashion to the press.

A Berkeleyside article about this City messaging quoted Mayor Jesse Arreguin's public statement: "Regardless of the underlying findings and outcomes, the investigator verified the accuracy of the text messages. What is clear from a plain reading of the texts is that the behavior was unprofessional and does not meet the standards to which we should hold our City employees…. This episode further demonstrates the need to implement reforms."[28]

Concurrent with, but independent of, the Swanson & McNamara investigation, the PAB launched a policy and practices review. According to the City Attorney's interpretation of the Charter Amendment relating to PAB powers and duties, we were required to limit our investigation to an inquiry into relevant policies and practices and to recommend reforms as appropriate. The Swanson team's authentication of the text messages and the allegations themselves have, among other issues, directed the PAB's attention to the need for an additional policy prohibiting arrest quotas--implicit or explicit--and the strengthening of many existing policies and practices. These recommendations are guided by a commitment to public safety and fair and impartial policing, and the need for a set of policies and Department culture that reflect those values.

While our investigation was necessarily limited to policy and practice recommendations, the PAB recognizes that policy is effective only to the extent that it is understood and enforced. A recent study published in *Nature Human Behavior* found that when officers in police organizations are not held accountable for policy violations and misconduct, the lack of serious accountability results in the propagation of misconduct in officers around them.[29] The study reported that even when shuffling the officer to a different unit, their peers are more likely to engage in misconduct themselves. The takeaway from that study is not only that policy reforms must be stringently enforced to be effective, but that unenforced policies breed infectious misconduct.

The PAB thus offers these policy reforms and at the same time commits itself to oversight of their enforcement. The PAB further makes recommendations for action by

[28] Article: Berkeley officials slam 'drips of information' in BPD text investigation (berkeleyside.org): https://www.berkeleyside.org/2023/07/21/berkeley-bike-squad-investigation-criticized

[29] "Causal Peer Effects in Police Misconduct," Quispe-Torreblanca, Edika and Neil Stewart. *Nature Human Behavior* 3(8): 797-807; "Police Misconduct May Spread like a Contagion, New Study Finds," Catherine Matacic*, Science*, May 27, 2019. https://www.science.org/content/article/police-misconduct-may-spread-contagion-new-study-suggests.

City Council in furtherance of accountability, transparency, and the PAB's ability to monitor implementation which is where policies are materially "enacted".

## DATA SOURCES

This review is based on both quantitative and qualitative data and records. The primary data sources were:

- the authenticated text messages submitted by former Officer Shedoudy;
- the Swanson Report, including the audiotaped interviews with BPD members;
- stop and arrest data of the DTF, by race and across time;
- a comparison of DTF stop and arrest data to that of the BPD as a whole;
- the rate of DTF arrests for violations of court orders, such as "stay-away orders";
- the disposition patterns of the DTF and for the BPD as a whole;
- BPD policies relating to arrest quotas, stay-away orders, fair and impartial policing, standards of conduct, off-duty conduct, employee speech, personal communication devices, overtime compensation, and the Early Warning System.

These data[30] provide an important window into the practices and culture of the DTF and guide our recommendations for reforms. While the BPD Transparency Hub allows the public—which in this case includes the PAB—to access raw data on stops and arrests, it is labor-intensive to analyze systematically these data in a way that is useful to full oversight. The ODPA staff and PAB Subcommittee Members spent many hours scrutinizing these data, and processing and organizing them into a form that was usable for our purposes.

## LIMITATIONS OF THE DATA

While the PAB utilized a substantial amount of data in its review, some of these data were already in the public domain. The PAB and the ODPA made concerted efforts to access other records that we believed fell within the purview of the policy and practices review provisions outlined in the City Charter. We were not initially allowed access to the Swanson Report, nor to the taped interviews with DTF officers. The ODPA spent many hours and valuable time attempting to access them. The ODPA also sought access to all records in possession of BPD's Internal Affairs Bureau regarding any disciplinary matters relating to former officer Shedoudy, Sergeant Kacelek and other members of the BPD Downtown Task Force and Bike Unit, and any complaints by members of the public filed with the BPD involving the Downtown Task Force. Despite concerted and repeated efforts, and despite the confidentiality oath taken by ODPA staff and PAB Members, these

[30] After much discussion with the BPD, in September 2023 the PAB obtained access to body-worn camera footage for the period under review. The videos contain thousands of hours of footage and given the time and staffing constraints the PAB was unable to analyze all this footage in time for this report. For future inquiries and investigations, the ODPA recommends acquisition of a program such as TRULEO which does computerized analyses of vast video footage.

records were initially withheld from the ODPA and the PAB. Many months later, the ODPA and Subcommittee Members Moore and Calavita were allowed to read the Swanson Report but without the ability to take notes or make copies.

Ultimately, the PAB decided to use its subpoena power and issued a subpoena for the outstanding records. The PAB delegated the issuance of the subpoena to the ODPA, who served it to the department on March 12, 2024. This included a request for "Text messages (beyond those publicly available) and or certification/affidavit from officers that no additional records exist" as well as records "between members of the task force and City Manager Dee Williams-Ridley." Subsequently, Chief Louis informed the ODPA that the BPD did not hold any records beyond those that were publicly produced.

The ODPA and the PAB Chair continued to seek full PAB access to the Swanson Report and audiotaped interviews. Almost a year after the Swanson Report was completed, the ODPA finally received the Report and audiotaped interviews, and PAB Members were given access. We independently spent many hours over several weeks reviewing the Report and interviews.

California Penal Code Section 832.7(a)[31] preclude us from quoting directly from these interviews or attaching officers' identities to individual responses. Instead, these interviews will be used more generally as background information and collectively as collaborating evidence.

Given the already substantial delay in receiving the records we requested, the PAB has decided to issue this report now, with a potential addendum if additional relevant records are secured.

This lack of full access means that key questions could not be answered in this PAB analysis and accompanying recommendations. These unanswered questions include, but are not limited to, the following:

- Were these racially inappropriate sentiments and other biased expressions previously exhibited by these or other officers?
- Did the BPD have knowledge of such expressions or conduct, and if so, what actions were, or were not, taken to intervene?
- How have possible allegations of a similar nature been handled in the past?

The obstacles encountered in accessing internal records underscore the importance of transparency and cooperation between the City and the PAB. The PAB's review of the Swanson team's audiotaped recordings with DTF officers has deepened our conviction that for the PAB to fulfill its Charter-mandated function of providing police accountability, it must routinely have access to documents and records describing actual BPD practices.

[31] California Penal Code Section 832.7:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=832.7.&lawCode=PEN

BPD cooperation with the City's oversight body is critical to ensuring public safety and socially just policing. It is also the fiscally responsible management approach.

## FINDINGS

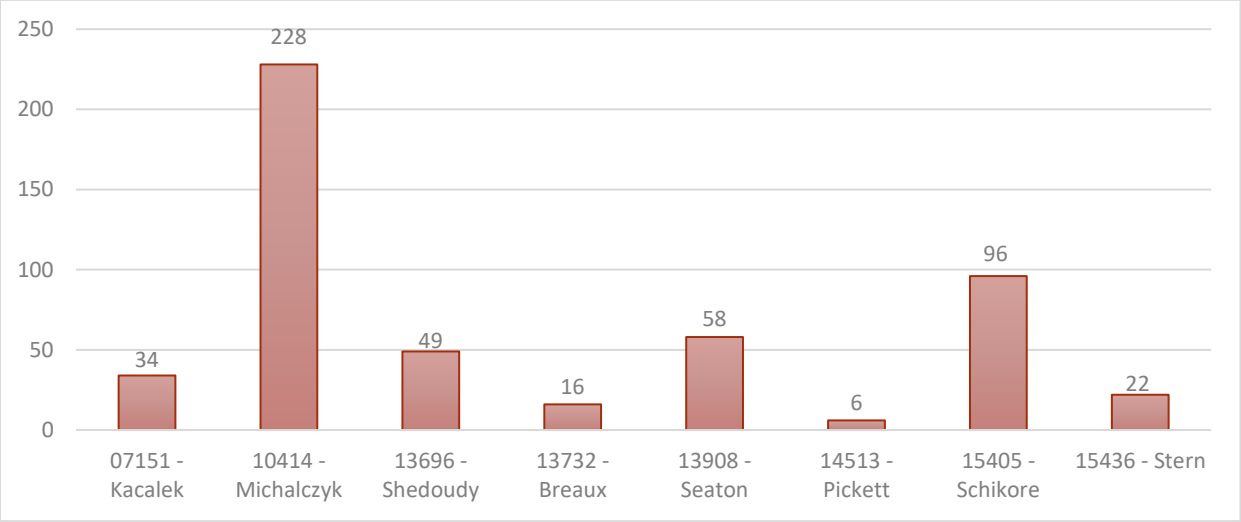
### Authenticated Text Messages

Through the Swanson & McNamara investigation, Mr. Shedoudy's provided text messages were authenticated and are appended as Appendix 2. Mr. Shedoudy submitted his phone to a third-party vendor for extraction of pertinent communications, encompassing text exchanges among DTF members from October 1, 2019, to approximately March 1, 2023.

### Statistical Analyses

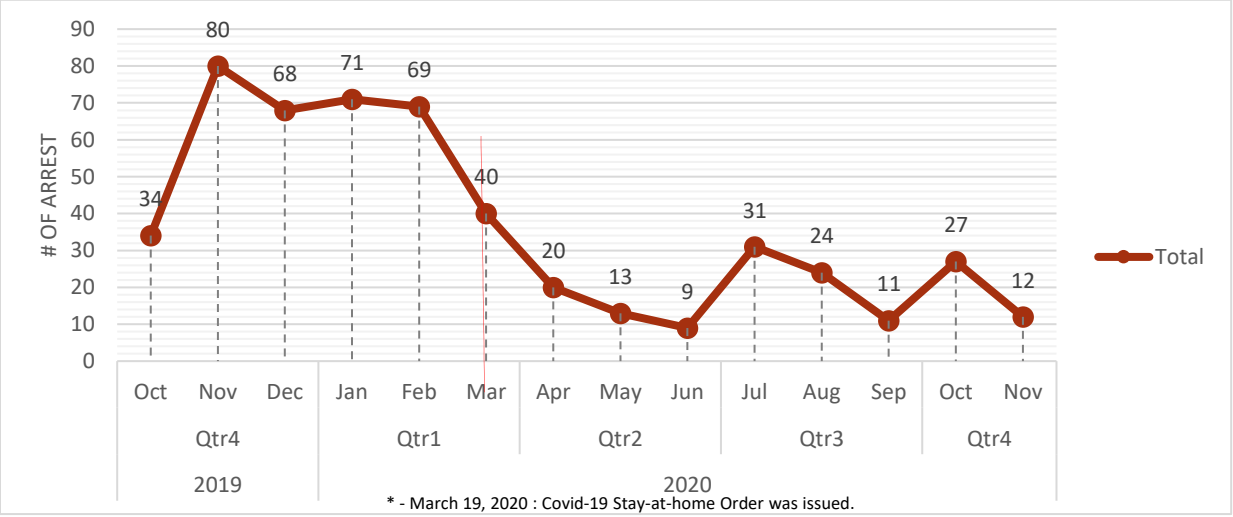
The average number of arrests per DTF officer in the period from October 1, 2019 to November 22, 2020—the period during which these text messages were sent--far exceeded that of the average number of arrests for other BPD officers. The eight officers in the DTF averaged 64 arrests that year, compared to the overall BPD average of 17. In addition, the number of arrests per DTF officer varied greatly from 6 arrests by one member to 228 by another.

**FIGURE 1. NUMBER OF ARREST BY OFFICER OF THE DOWNTOWN TASK FORCE AND BIKE UNIT**




Similarly, the number of DTF arrests varied substantially by month, peaking in November 2019 as DTF members were being pressured to reach 100 ("81 arrests! We can do 19 by Friday for sure!" "I was thinking whoever gets the least arrests today does the waxing.").

**FIGURE 2. DOWNTOWN TASK FORCE ARREST NUMBERS BY MONTH**

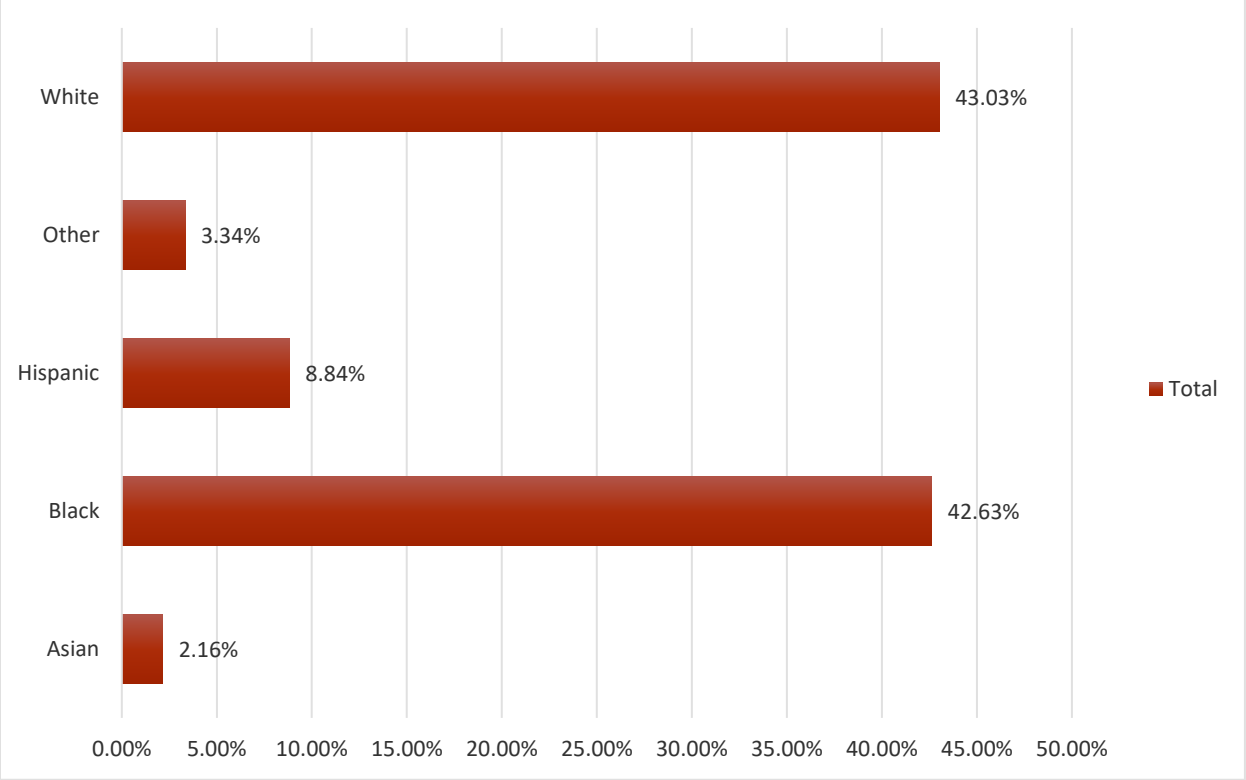



These arrest numbers, together with the text messages, leave little doubt that pressure—more or less explicit, perhaps informal, seemingly jocular--was exerted to maximize arrest figures, sometimes the specific number of 100. The spike in arrests was so dramatic during some periods that, according to the Swanson team and some of the interviewed officers, jail staff complained they couldn't keep up with their booking and detention.

Approximately an equal proportion of these arrests involved Black individuals (42.63%) and White individuals (43.03%), while Latino/a individuals accounted for 8.84% of the total. According to the 2020 census[32], the number of White individuals residing in Council District 4 which encompasses the downtown is approximately four times the number of Black residents in the area, suggesting that the arrest rate for Black people was almost four times as high as for White people. However, it is difficult to be precise about the racial disparity since the census may undercount the unhoused who were often the focus of DTF activity.

[32] United States Census Bureau 2020 Census Data for Berkeley, California: https://www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/SBO030217

**FIGURE 3. RACE OF INDIVIDUALS ARRESTED BY THE DOWNTOWN TASK FORCE/BIKE UNIT (OCT.2019 TO NOV.2020)**

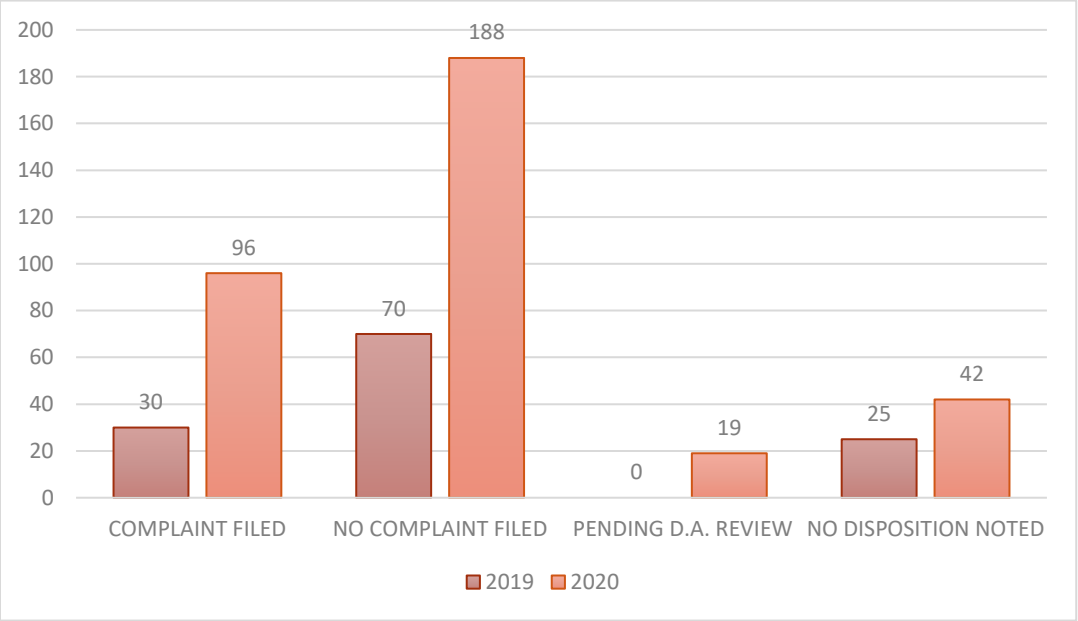



Additionally, 20.63% of the 509 arrests made by the DTF during this period were for contempt of court (California Penal Code 166[33]), typically considered a misdemeanor. Of these, 96 out of 105 contempt of court arrests also included a probation violation. Given the relatively large size of the unhoused population and its proximity to the UC campus and downtown businesses, it is likely that a significant portion of these arrests were at least in part for violations of stay-away orders. This is supported by audiotaped interviews with DTF officers, which indicate that stay-away orders are central to their enforcement actions. In some cases, officers even requested that judges impose stay-away orders, facilitating subsequent arrests. Without closely reviewing individual incident reports and probationary conditions imposed on arrested individuals, it is difficult to determine how many of these violations were specifically for stay-away orders as distinct from other probation violations.

A considerable number of DTF arrests were dismissed outright with no complaint filed by the Alameda County District Attorney, with dismissed cases rising from 70 in 2019 to 188 in 2020.

[33] California Penal Code Section 166: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=166.

**FIGURE 4. DOWNTOWN TASK FORCE ARREST SENT TO ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE (OCT. 1, 2019 – NOV. 22, 2020)**




Finally, it is notable that as documented in the City Auditor's 2022 report on BPD overtime, in 2020 the BPD outspent its overtime budget by more than $5 million[34]. While much of this was due to contracts with outside entities, some was also the result of the "chain reaction" of compensatory time. As the Auditor explained, when an officer does overtime, they may receive either overtime pay or compensatory time off. When they choose the latter, another officer fills in with overtime, who then may choose compensatory time, and so on, eventually magnifying many times over the effect of the original overtime.

The text messages revealed by Shedoudy suggest that overtime work was liberally authorized. Sgt. Kacalek enthused that if his officers "kick ass" and "arrest people" they "will never [be] jam[med] up about overtime." The DTF interviews corroborate the essentially open-ended, unlimited access to overtime.

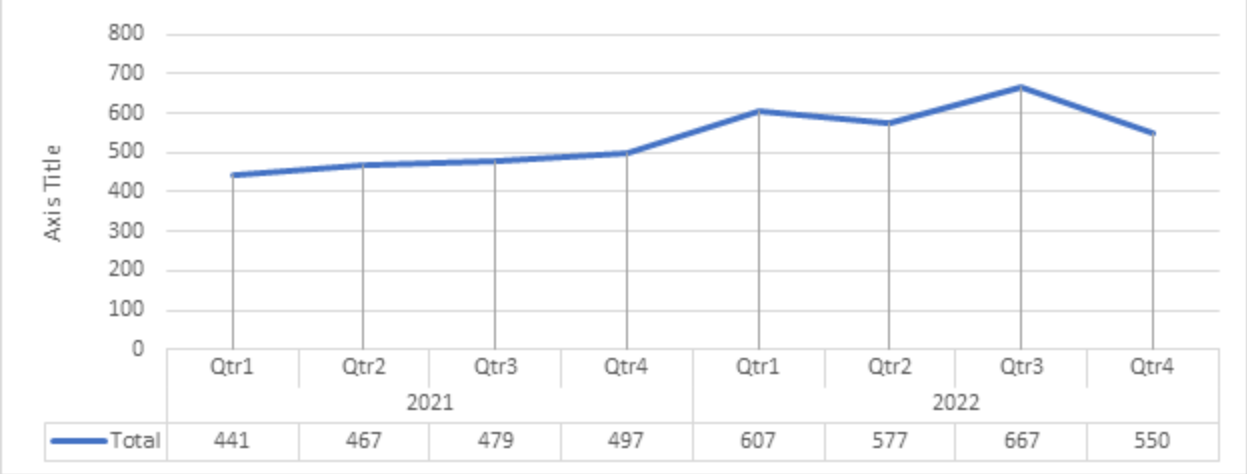
The data presented above represent a moment in time. Because this report is forward-looking and is focused on policy and practices, it is important to examine the subsequent state of DTF operations. Seven of the original officers[35] were on the Downtown Task Force/Bike Unit for all eight quarters from January 2021 to December 2022; Sgt. Kacalek was on DTF duty for five of those quarters.

[34] City Auditor Report "Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities" https://berkeleyca.gov/sites/default/files/2022-04/Berkeley Police - Improvements Needed to Manage Overtime and Security Work for Outside Entities.pdf

[35] These were officers Breaux, Michalczyk, Pickett, Schikore, Seaton, and Stern, all of whom were also on the earlier DTF.

Once again, the number of arrests by these seven officers ranges substantially from sixteen for one officer to 265 for another. Further, the 585 arrests by these eight officers constitute a significant portion of the 4,285 arrests made by the BPD during this period.

**FIGURE 5. ARREST MADE BY THE BPD (JAN. 2021 - DEC. 2022)**




Racial disparities in arrests by the DTF increased substantially in this period, with Black individuals constituting 46.9% of arrests, while White individuals made up 29.2% of arrests, and Latino/a people were 15.3% of those arrested.

## Policy and Practices Deficiencies and Recommendations

These qualitative and quantitative findings strongly suggest that policy changes are necessary. Among the policies the PAB recommends strengthening are policies on:

- fair and impartial policing (Policy 401);
- the use of personal communication devices such as cellphones (Policy 701);
- employee speech, expression and social networking (Policy 1029);
- the early warning system (Policy 1041);
- standards of conduct (Policy 321); and
- overtime compensation requests (Policy 1019).

In addition, the PAB recommends:

- adding a stand-alone policy prohibiting implicit or explicit arrest quotas that go beyond the California Vehicle Code (Section 41600-41603) on vehicle stops[36] and
- consideration of an official standard for the enforcement of stay-away orders.

[36] California Vehicle Code. Section 41600-41603. Chapter 7. Arrest Quotas: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=17.&title=&part=&chapter=7.&article=

Before proceeding to these policy reviews, it is important to emphasize that policy changes are meaningless if they are not enforced or if BPD officers are not sufficiently informed on policy matters. In our review of the evidence and audiotaped interviews, it was clear that DTF officers in some cases engaged in practices that were not consistent with policy and in other cases expressed confusion as to what those policies were.

We turn now to specific concerns and preliminary recommendations for reform of existing policies. Following that, we offer recommendations for a new policy prohibiting all arrest quotas; consideration of a standard for enforcement of stay-away orders; and additional training. The PAB presents these preliminary policy recommendations with the intention of collaborating with the BPD to refine and enhance the necessary reforms, ensuring they effectively address the needs of the Berkeley community.

## Fair and Impartial Policing, Policy 401

BPD data have consistently shown that Black and Latino/a motorists, cyclists and pedestrians are far more likely to be stopped, arrested and searched than are White people. The 2018 Center for Policing Equity (CPE)[37] report commissioned by the City found that Black motorists were 6.5 times more likely to be stopped by Berkeley police than White motorists and that Black pedestrians were 4.5 times more likely to be stopped.

Subsequent to this CPE report, Mayor Arreguin convened a Working Group on Fair and Impartial Policing. It met for almost two years and submitted a package of recommendations to City Council on February 23, 2021. The recommendations, which were passed largely intact, were wide-ranging and significant and included, among many other proposals, recommendations for a requirement that intensive training focused on implicit bias be administered annually, and for reforms of the Early Warning System.

Data in the BPD Transparency Hub reveal that the disparities reported by the CPE remain entrenched. According to the 2024 PAB report on the Implementation of Fair and Impartial Policing directives[38], for the period from April 2021 to October 2023, Black motorists were 5.8 times more likely to be stopped by the BPD than White motorists; 10 times more likely to be searched; and 10 times more likely to be arrested. Black pedestrians were 8 times more likely to be stopped than their White counterparts. Overall, Black residents of Berkeley were 6.55 times more likely to be stopped by BPD than White Berkeley residents.

As noted earlier, it is challenging to calculate with precision the racial disparities in arrests in the downtown area. What we do know, however, is that the racial disparity in

[37] Report, "The Science of Justice: Berkeley Police Department National Justice Database City Report May 2018": https://rentboard.berkeleyca.gov/sites/default/files/documents/Berkeley-CPE-Report-May-2018.pdf

[38] Police Accountability Board Report "Fair and Impartial Policing Implementation": https://berkeleyca.gov/sites/default/files/documents/2024%20PAB%20Report_FIP%20Implementation_Final.pdf

arrests has increased substantially from 2019-2020 when approximately equal numbers of Black people and Whites were arrested by the DTF, to 2021-2022 when the percentage of arrestees who were White had fallen to 29.2% and Blacks and Latinos made up more than 62%.

We know too that the text messages from 2019-2020 reveal open racial animus among at least some officers. As Sgt. Kacalek joked derisively when watching a blurry video of a distillery, "Shedoudy's Obama phone fucked up the video" (presumably ridiculing a program that provided free cell phones to eligible low-income households).

In a subsequent text, Sgt. Kacalek wrote about a media report of a particular incident and the alleged perpetrator: "Interesting how he listed him as 'Dennis Daniels, male, 51 years old, no address'. I guess he isn't black or no one could decipher his race and he isn't homeless or even unhoused, just no address. #Iwantthecoldhardtruth."

The disdain extended to the unhoused people Sgt. Kacalek patrolled: "Stern [DTF patrol officer] is gonna come back with a new strain that wipes out the homeless pop. We will just ride by the bodies!"

Despite these inappropriate expressions of racial animus and disdain for the unhoused it appears that no DTF officers reported the inappropriate conduct and expressions until the terminated officer Shedoudy disclosed the text messages to City Council. DTF members interviewed by the Swanson team pushed back against the notion that such messages were inappropriate, viewing them instead as intended as humor and not to be taken seriously—suggesting a jarring disconnect between the public reaction to the racist undertone of these texts and their matter-of-fact reception by DTF members.

In light of these quantitative and qualitative findings, the PAB recommends the following additions to the Fair and Impartial Policing Policy (#401):

- A provision explicitly clarifying that the policy refers to both conduct and speech or expression and
- A provision that mandates annual intensive implicit bias training as called for in the Council directive in the Fair and Impartial Policing reforms of 2021[39]

See Attachment 1 for the current Fair and Impartial Policing Policy, with recommended changes highlighted in red.

## Personal Communication Devices, Policy 701

The cellphones used by the DTF to send these text messages were officers' personal devices. While the department issues personal communication devices (in this case, cellphones) to all sworn members and encourages their use for work-related issues

[39] Report and Recommendations from Mayor's Fair and Impartial Policing Working Group: https://berkeleyca.gov/sites/default/files/documents/2021-02-23%20Special%20Item%2001%20Report%20and%20Recommendations.pdf

when radio communication is not feasible, the policy allows wide discretion. As was the case in the Swanson & McNamara investigation, the fact that the messages in question were sent on officers' own personal devices—not those issued by the Department--complicated considerably investigators' access. Furthermore, some of the interviewed DTF members were not aware of *any* policy on this issue. The PAB therefore recommends:

- strengthening Policy 701 to stipulate that PCDs are to be used *only* when radio communication is not feasible;
- that members using a PCD be required to use department-issued PCDs, absent exigent circumstances;
- adding a provision making it clear that the prohibition on inappropriate use of a PCD, whether on duty or off-duty on work-related issues, includes any expression that damages the mission, function, reputation or professionalism of the BPD; and
- providing additional training on the use of PCD's.

See Attachment 2 for the current Personal Communication Devices with recommended changes highlighted in red.

### Employee Speech, Expression, and Social Networking, Policy 1029

The text messages that were exchanged among members of the DTF expressed racial animus and disdain for the unhoused. In this, they appear to have violated the BPD policy on employee speech and expression. Specifically, the policy prohibits any speech "pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees." The meaning of this policy appears to be clear; however, in the context of DTF members' interpretation of the messages in question as jesting, the PAB recommends not only the implicit bias training referred to above, but also:

- adding further specificity to leave no doubt about its meaning, explicitly including reference to its application whether the speech is transmitted through a personal or department-issued electronic device and whether the member is on or off-duty.

See Attachment 3 with the current Employee Speech, Expression, and Social Networking Policy, with recommended changes highlighted in red.

### Early Warning System, Policy 1041

An Early Warning System (EWS), sometimes referred to as an Early Intervention and Risk Management System, was a central component of the directives of the City Council, following the recommendation of the Mayor's Working Group on Fair and Impartial Policing. As the Working Group stated in its recommendation to Council in February 2021, an effective system involves "identifying officer outliers in stops, searches, and use of force…and examining the reasons for racial disparities." "Outliers" is a term of art that refers to those whose performance on certain indicators is outside the Department

average. The system does not focus on discipline but rather on identifying behavior that may be problematic as early as possible. Such programs include monitoring, mentoring, training and, where appropriate, counseling.

In addition to enhancing public safety and officer welfare and safeguarding against bias, effective systems are a financially responsible approach. According to a report by the *Washington Post*, twenty-five cities paid out more than $3.2 billion in settlements for police misconduct between 2010 and 2020, with claims for officers charged in more than one misconduct case accounting for $1.5 billion.[40] Over the past decade, the City of Berkeley has paid $1,242,860.97 across 471 claims in such settlements, with a total incurred cost of almost $2 million, including the cost of processing these claims.

The current EWS in Berkeley does not have an effective way of systematically identifying outliers on indicators such as numbers of stops, arrests and searches. While random audits of a few officers on a quarterly basis have been instituted, the small number randomly singled out is unlikely to have an effective impact or to identify significant outliers, nor is it consistent with the directive from Council based on the Mayor's Working Group on Fair and Impartial Policing.

As criminologist Carol Archbold, who specializes in police accountability, said in the context of the *Nature Human Behavior* report on the contagiousness of misconduct, early intervention systems can be effective: "The spread [of misconduct] can be stopped if it's tracked, and if something is done about it."[41]

If an effective Early Warning System had been in effect, it is probable that, based on the statistics cited above—particularly the spike in arrests during certain periods—some members of the DTF would have been audited as outliers and the scrutiny could have minimized the damage.

In April 2023, City Council referred $100,000 to the June 2023 budget to hire a consultant for the design and help with implementing a new Early Intervention and Risk Management System. It will take some time before that project is complete and a new system put in place. In the interim, the PAB recommends:

- quarterly audits of officers with unusually high numbers of stops, arrests, and/or searches, for people of color and the unhoused, instead of the current random audits of several officers

See attachment 4 for the current Early Warning System Policy 1041, with recommended changes outlined in red.

[40] "The Hidden Billion Dollar Cost of Repeated Police Misconduct," *The Washington Post*, March 9, 2022.
[41] "Study Finds Misconduct Spreads among Police Officers Like Contagion," Nova KQED, May 27, 2019. https://www.pbs.org/wgbh/nova/article/police-misconduct-peer-effects.

## Standards of Conduct, Policy 321

As Mayor Arreguin stated in his press release following the statements of City Spokesperson Chakko, "What is clear from a plain reading of the texts is that the behavior was unprofessional and does not meet the standards to which we should hold our City employees…. This episode further demonstrates the need to implement reforms."

These authenticated texts reveal conduct that was clearly at odds with the official policy and underscore the need for explicit statements regarding the duty of all officers to report inappropriate conduct or violations of policy. It is of great concern that some DTF officers were not even aware of any mechanism for reporting observed misconduct.

The PAB is pleased that the Chief has adopted the Active Bystander for Law Enforcement (ABLE) program for which training will soon commence. That program will train officers to intervene when they witness their peers engaging in inappropriate conduct.

In addition to this important ABLE program, the reforms we recommend to this Standards of Conduct policy will:

- make it clear that any behavior or expressions that bring disrepute to the Department—whether an officer is on or off-duty—will not be tolerated, and
- Members have an obligation to report any such behavior or expressions by any other member, consistent with Policy 1010.9 concerning 'Employee Responsibility' to file a personnel complaint if misconduct by a BPD colleague is observed.

See Attachment 5 for the current Standards of Conduct Policy with recommendations highlighted in red.

## Overtime Compensation Requests, Policy 1019

The police overtime issue is a longstanding concern. A 1998 report by the National Institute of Justice declared, "There is a sense both inside and outside the law enforcement community that overtime is overused, misused, and only halfheartedly controlled."[42]

On March 23, 2022, the Berkeley City Auditor submitted a report entitled "Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities."[43] The report found that "BPD does not adhere to their overtime policies and controls." In fiscal year 2020, 21% of officers worked more than their weekly overtime limit

[42] Bayley, David and Robert Worden. 1998. "Police Overtime: An Examination of Key Issues." National Institute of Justice, U.S. Department of Justice. Washington DC.

[43] Berkeley City Auditor, "Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities," March 3, 2022. The report won an excellence award from the Association of Local Government Auditors.

of 44 hours at least once, risking their own health and safety and the safety of others. One officer exceeded the limit in eleven weeks during 2020. Further, the Auditor's report stated that the BPD did not "have an effective system to enforce their policy and manage overtime."

The Auditor's report further noted that "overtime was the biggest reason" why the BPD consistently spent more than their budget allocation. In order to align the overtime budget with actual outlays, in 2021 the City's overtime budget allocation was raised to $5.3 million and another $1 million was put in reserve.

The Auditor noted that there are many legitimate reasons for the police use of overtime—for example, a call that comes in at the end of a shift or the need to cover for absences or vacancies. However, excessive overtime imposes significant physical, mental, and fiscal risks. She also noted that compensatory time for overtime worked sets off a "chain reaction" of overtime expenses, and that while such comp time is limited by policy it was unclear "whether this policy is being enforced" (p. 16). On June 25, 2024, Chief Louis gave Council an update on implementation of the Auditor's twelve recommendations. She reported that five had been implemented and that the others were in process. However, we note that none of these recommendations deal squarely with the issue of the broad discretion related to overtime.

The Auditor advanced twelve recommendations—importantly, including improved security contracts with the outside entities that make up a large percentage of overtime hours. The Auditor's final report included responses from the Department indicating that many of the recommendations are in the process of being implemented. Among these BPD responses was a "proposed implementation plan" to "review existing policy and ensure that any policy updates or clarification are completed."

BPD policy on overtime requests and the verification of overtime worked relies on broad discretion and appears open to misuse. This wide discretion and potential for misuse are apparent in this text from Sgt. Kacalek: "I was at Kevin Reece's birthday party just now and Dave was there and we briefly talked about DTF. He said just kick ass, arrest people, have fun, and get results and I will never jam you about overtime." Indeed, the audiotaped interviews of DTF members suggest that DTF officers worked overtime at will.

While some supervisory discretion is inevitable and necessary, the current policy leaves wide gaps through which such misuse can proliferate. For example, Section 1019.1.1 of the Overtime Compensation Requests policy states, "All requests to work overtime shall be approved in advance by a supervisor." However, this clear mandate is followed by the broad exemption that "if circumstances do not permit prior approval," approval can be sought after the fact when the overtime is completed.

The PAB does not offer specific policy reforms here. Instead, we recommend that the review of existing policies referred to in the BPD response to the Auditor be robust

and foreground the need to narrow this broad discretion. Importantly, for example, among other provisions it might:

- stipulate what circumstances, or types of circumstances, would comprise the need to bypass the otherwise straightforward directive that “all requests shall be approved in advance…” and
- consider excessive overtime as a factor triggering an Early Warning System audit.

While discretion and flexibility are inevitable, the conditions under which discretion is applied need to be described. The current policy perhaps unintentionally sends a message of virtually unlimited flexibility--a flexibility that some DTF officers interpreted as open-ended. See Attachment 6 for the current Overtime Compensation Policy.

## Prohibition on Arrest Quotas

The legislative issue of police arrest quotas, though often obscured and scattered across many states, has its origins in Berkeley—a city renowned for its progressive and forward-thinking stance in shaping societal norms and legal frameworks (Ossei-Owusu, 2021).

Significant legislative activity on arrest quotas emerged in the 1970s, with Black Democratic Assemblyman John Miller introducing California's bill in 1975. Miller, often described as a "progressive independent in local politics," demonstrated a keen political acumen, underpinning his support for quota bans with inclusive rhetoric (Id.). His district, which encompassed the diverse cities of Oakland and Berkeley, provided a unique perspective, one that resonated with concerns for both police officers and the public.

Miller articulated the inherent injustice in quotas, deeming them "unfair, undemocratic, and unjust."[44] He was troubled by the notion that an officer's failure to meet quotas could lead to demotion, while simultaneously expressing concerns for "the average California driver," who might find themselves disbelieved by a "rubber stamp traffic court system."[45]

California's statute, based on a convergence of bipartisan concerns, remains relevant today, specifically in the City of Berkeley. It serves as a historical testament to the enduring pursuit of justice and fair play, core tenets that guide our efforts to maintain police accountability, foster public trust, and safeguard civil rights.

While most people assume that a ban on police arrest quotas is already enshrined in the California Penal Code, it is limited to the California Vehicle Code. This is an oversight that needs to be corrected, both locally and at the State level.

The brief summary of the Swanson report provided to the public by the City of Berkeley appears to absolve the DTF of establishing formal arrest quotas. However, the

[44] See Ossei-Owusu, 2021 citing *Measure to Outlaw CHP’s Ticket Quotas*, *supra* note 69, at 1.
[45] Id.

Swanson report stipulates that while no formal arrest quotas were established, there was an expectation that a certain number of arrests was to be aimed for. The text messages quoted above are replete with explicit and implicit references to “Operation 100” in which DTF patrol officers were encouraged by Sgt. Kacalek to achieve at least 100 arrests per month. “How’s Operation 100 going?”, he asks. And, “81 arrests! We can do 19 by Friday for sure!” And, by way of a (presumably) teasing reminder, “I was thinking whoever gets the least arrests today does the waxing.” DTF members who were interviewed consistently eschewed the term “quota”, but they acknowledged an expectation of high arrest numbers as an indication that they were being proactive and doing their job.

A spike in arrests attests to the seriousness of the Operation 100 expectation and its implicit quota.

Given the legislative history of arrest quotas, their (incorrectly) assumed ban in California, and their potential impact on our most marginalized community members, the PAB recommends that the BPD, in collaboration with the PAB develop a new, freestanding policy prohibiting all arrest quotas whether they refer to vehicles, cyclists, or pedestrians, whether formal, informal, or implicit, and whether they are enforced with formal disciplinary measures or solely incentives/disincentives. A sample arrest quota prohibition is attached in Appendix 3.

### Stay-away Orders

Violation of a stay-away order is considered a contempt of court misdemeanor under California Penal Code 166(c)(1). While the DTF text messages do not explicitly reference stay-away orders, BPD data indicate that over 20% of DTF arrests during this period were for violations of court orders. Among these cases, 91.4% were linked in part to violations of probation. Without a detailed review of individual incident reports, it is difficult to ascertain how many arrests stemmed primarily from a violation of a stay-away order.

Currently, BPD lacks a specific policy regarding stay-away orders. Some interviewed officers assert that enforcement allows no discretion, while others maintain that some discretion exists. Given the significant impact of stay-away orders on UC Berkeley property and downtown businesses, and officers' ability to request these orders post-arrest from a judge, the PAB strongly recommends that BPD establish a comprehensive stay-away order policy and provide training consistent with state law.

The current resources of the PAB do not allow for a detailed examination of the circumstances surrounding stay-away arrest. However, we recommend that BPD investigate the frequency and context of these arrests, and assess whether the district attorney's high dismissal rate (as noted earlier for DTF cases) is disproportionately related to stay-away orders.

## RECOMMENDATIONS FOR CITY COUNCIL ACTION

1. **Pass an ordinance or otherwise affirm the Police Accountability Board's ability to access documents and records in furtherance of its central "accountability" function, consistent with Charter Amendment Section 125.**

The policy reforms recommended above are an important first step in ensuring that the kind of inappropriate conduct and expression revealed in the DTF text messages do not recur. However, policy reforms are only a first step. No policy is effective if it is not fully implemented and enforced. Real law—real policy—takes place on the ground where it is literally "enacted" every day through practice.

The PAB "policy and practices review" of the texting incidents of concern here are a case in point. The content of the audiotaped interviews of DTF Members which were accessed by the PAB only after persistent and lengthy efforts have underscored how critical such authority is if the PAB is to fulfill its function of Police Department accountability and transparency. Without such access, our oversight would be largely limited to formal policies, with no meaningful "practices" oversight.

The Charter Amendment creating the PAB established as one of its primary purposes the promotion of "public trust through independent, objective, civilian oversight of the Berkeley Police Department," including "setting and reviewing Police Department, policies, **practices**, and procedures…" (Section 125 (1); emphasis added)[46].

If the Police Accountability Board is to fulfill its Charter-mandated function of police oversight and accountability, it must have the ability to access the internal records of the BPD that track its actual practices. This would include, but not be limited to, Internal Affairs Bureau records of internal and external complaints and their processing, Early Warning System records, body-worn camera footage, and police reports.

It should be noted further that the inability of this oversight body to provide oversight of daily BPD practices limits its ability to prevent or forestall the kinds of misconduct that went undisclosed for more than two years before being exposed by an individual who was no longer part of the police force.

This restriction on the PAB oversight function plays out in other incidents of interest as well, including serious allegations of significant misconduct—incidents that we as the police oversight body sometimes only learn about from press reports months or years after the fact. We fully understand that the PAB is not authorized to recommend discipline outside of individual complaints. What is important is *patterns of practice* that may be revealed in a PAB investigation and that are integral to the PAB exercising its Charter-mandated oversight of not only BPD policy, but practices.

[46] Berkeley City Charter Section 125(1): https://berkeley.municipal.codes/Charter/125(1)

To this end, the PAB recommends that City Council pass an ordinance or otherwise ensure that the PAB has the authority to access BPD records that attest to how formal policies are being implemented and enforced, both through BPD procedures and in daily practice on the ground. This recommendation addresses the core of our Charter-mandated function of oversight, accountability, and the promotion of trust.

In 2023, City Council passed its priority list for legislative activity at the state and federal levels, a list which authorizes its lobbyists to act on its behalf to champion legislation consistent with Berkeley's values and interests. That list included a directive to "support efforts to increase peace officer accountability…". "Peace officer accountability" was once again a lobbying priority for Berkeley in 2024.

An ordinance to ensure that the PAB may self-initiate investigations of alleged incidents of serious misconduct will allow it to fulfill its Charter-mandated function of oversight. This would be consistent with the City's lobbying efforts to "support efforts to increase peace officer accountability."

2. **Adopt a robust resolution ensuring full and meaningful accountability for sworn officers—whether on-duty or off-duty--who engage in misconduct of any kind but especially actions or expressions of racial or other types of bias**.

Disciplinary actions imposed on sworn officers who engage in policy violations are not revealed to the public, consistent with California Penal Code 832.7. This lack of disclosure, combined with the inevitable rumor mill that works to fill the gap, has threatened to erode public trust. The erosion of trust has been furthered by revelations in the press that one recent incident resulted in a seeming exoneration by the BPD Internal Affairs Bureau, despite what Mayor Arreguin called his "shock and outrage" at the alleged incident.[47] Council could help ensure accountability by adopting a resolution underscoring its support for robust and meaningful accountability for officers, whether on or off-duty, who engage in misconduct of any kind, but with a special emphasis on racial or other types of bias.

3. **Direct the City Manager to work with the BPD, PAB and ODPA to create a public repository to fulfill the vision of California Penal Code Section 832.7[48] (b)(1) to allow for transparency in cases of sustained allegations of officer racism or other discriminatory conduct or expressions.**

[47] See "'Don't give me that Black crap': Video from 2017 shows embattled Berkeley sergeant" (berkeleyscanner.com. September 13, 2023): https://www.berkeleyscanner.com/2023/09/14/policing/berkeley-police-sergeant-dave-marble-lawsuit-video/

[48] California Penal Code Section 832.7: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=832.7.&lawCode=PEN

The Penal Code that protects peace officers' personnel records from public disclosure (Section 832.7) has been amended several times. These amendments now exempt the following records from protection:

1. Discharge of a Firearm: Any incident where a peace officer discharges a firearm at a person (Section 832.7(b)(A)(i)).
2. Use of Force: Any use of force resulting in death or great bodily injury (Section 832.7(b)(A)(ii)).
3. Sexual Assault: Any sustained finding that a peace officer engaged in sexual assault (Section 832.7(b)(B)(i)).
4. Dishonesty: Any sustained finding of dishonesty by a peace officer made by any law enforcement or oversight agency (Section 832.7(b)(C)).

The most recent amendment further allows the disclosure of records related to "any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status" (Section 832.7(b)(D)).

The Berkeley City Council should direct the City Manager to collaborate with the Berkeley Police Department (BPD), the Police Accountability Board (PAB), and the Office of the Director of Police Accountability (ODPA) to implement these amendments. Specifically, they should:

1. Create a public repository that proactively publishes relevant findings within 30 days of their conclusion, regardless of Public Records Act (PRA) requests; and
2. Ensure full transparency in cases of sustained allegations and other incidents eligible for public disclosure.

This action will fulfill the vision of the amendments to California Penal Code Section 832.7 as outlined in Senate Bill 16 (SB 16)[49], Senate Bill 1421 (SB 1421)[50], and Assembly Bill 748 (AB 748)[51].

[49] Senate Bill 16, Skinner. Peace officers: release of records: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB16

[50] Senate Bill 1421, Skinner. Peace officers: release of records: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421

[51] Assembly Bill 748, Ting. Peace officers: video and audio recordings: disclosure: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB748

4. **Call on California state legislators to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code (Section 41600-41603).**

Most people assume that a ban on police arrest quotas is already enshrined in California law, but it is limited to vehicle stops. This is an oversight that needs to be corrected, both locally and at the State level. Given the legislative history of arrest quotas, their (incorrectly) assumed ban in California's Penal Code, and their potential impact on our most marginalized community members, the PAB recommends that Council call on the legislature to correct that oversight by extending the prohibition on arrest quotas, whether they be implicit or explicit, in the Penal Code.

Whatever the findings of the Swanson & McNamara team, the DTF text messages as well as the spikes in arrests during that month, drew the PAB's attention to arrest quotas and, eventually, to the absence of their general prohibition in the Penal Code. Once again, Berkeley could take the lead on spearheading a remedy for this apparent oversight.

## SUMMARY

The Police Accountability Board is charged by the City Charter with oversight of the Berkeley Police Department's policies, practices, and procedures, in the interest of promoting accountability, transparency and public trust.

This report was triggered by a series of text messages sent among sworn officers of the BPD's Downtown Task Force and Bike Unit, and its goal is to fulfill—to the extent possible under current restrictions--its Charter-mandated oversight functions. The report is forward-looking, providing recommendations for policy and practice changes that may help prevent such harmful incidents in the future.

We draw our recommended policy reforms from implications of the text messages themselves, publicly available statistical data, the Swanson & McNamara Report, and DTF officers' audiotaped interviews.

The policies focused on in this report are Fair and Impartial Policing (#401); Personal Communication Devices (#701); Employee Speech, Expression, and Networking (#1029); Standards of Conduct (#321); the Early Warning System (#1041); and Overtime Compensation Requests (#1019). In addition, the PAB recommends a freestanding prohibition on all arrest quotas, implicit or explicit, and a clear policy on the enforcement of stay-away orders.

These policy reforms are one important step. However, policy reforms are only meaningful to the extent that they are fully understood, implemented, and robustly enforced. The PAB thus recommends, as a key priority, that City Council enact an ordinance or other mechanism to ensure that this oversight body—which has sworn an

oath of confidentiality--has the authority to access internal BPD records in the interest of preventing such damaging practices in the future.

Less significant perhaps, but of great symbolic value, the PAB recommends that Council pass a resolution affirming its strong support for full and meaningful accountability for officers who have engaged in misconduct whether they are on or off-duty.

The PAB also recommends that the Council call on the State Legislature to 1) add an exemption in cases of sustained racism or other bias, to 832.7 which protects police records from public disclosure; and 2) rectify an oversight with regard a prohibition on arrest quotas--which is currently limited to the California Vehicle Code—by extending that prohibition in the California Penal Code. By doing so, the City of Berkeley can exhibit its leadership on these important social justice issues.

The text messages that were sent among officers of the Downtown Task Force were harmful to the community and arguably demoralizing to the many BPD officers who find such sentiments repugnant. This report is necessarily forward-looking and aims to provide an environment in which transparency, accountability, and justice can flourish. This cannot be accomplished through policy changes alone. It requires collective efforts by the PAB, BPD and its leadership, the City Manager, and City Council. The PAB looks forward to this collaboration.

# ATTACHMENTS

**ATTACHMENT 1. Fair and Impartial Policing: POLICY 401 (with recommended changes in red).**

## 401.1 PURPOSE AND SCOPE

This policy is intended to reaffirm the commitment of the Berkeley Police Department to fair and impartial policing; to clarify the circumstances in which dispatchers and officers can consider race, ethnicity and other demographics; and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable way, including identifying, intercepting, and documenting profiling by proxy.

California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This policy explicitly prohibits racial profiling and other biased policing. This policy describes the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in making law enforcement decisions.

### 401.1.1 DEFINITIONS

Definitions related to this policy include:

**Bias-based policing** - Any police-initiated action that relies on the race, ethnicity or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being engaged in criminal activity.

## 401.2 POLICY

Investigative detentions, traffic stops, arrests, searches and property seizures by officers will be based on a standard of reasonable suspicion or probable cause. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause.

Officers shall not consider race, ethnicity, national origin, gender, age, religion, sexual orientation/ identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities except when officers are:

1. Seeking specific person(s) who have been described in part by any of the above listed characteristics, or
2. The person(s) are being sought for a specific law enforcement purpose.

Discrimination or harassment based on a trait or class described above is considered a "serious allegation" of misconduct.

## 401.3 RESPONSIBILITY TO REPORT AND TAKE CORRECTIVE ACTION

Employees who become aware of another employee engaging in biased policing—including both conduct and speech or expression—shall report it and shall adhere to reporting procedures set forth in the Personnel Complaints Policy.

A supervisor or command officer who becomes aware of biased policing shall adhere to notification and administrative procedures set forth in the Personnel Complaints Policy.

All reports of biased policing shall be investigated in accordance with the Personnel Complaints Policy.

## 401.4 PROFILING BY PROXY

Bias, racism or profiling by proxy occurs in a call for service when an individual call the police and makes false or ill-informed claims about persons they dislike or are biased against. Dispatchers and Officers have a role in mitigating bias-based calls for service (CFS), and proper handling of these calls is important to maintain and build trust between the police and the community.

Call takers have a responsibility to do an initial screen and triage of all calls to ensure they are accurately entered as the correct CFS with the appropriate priority attached. Call takers should ask questions and explore whether there are concrete, observable behaviors that form the basis of the suspicious activity or crime the RP is reporting. Calls for service (CFS) should focus on behaviors of involved parties, not appearance. Reports of suspicious activity require the reporting party (RP) to articulate something criminal or reasonably suspicious about a person's behavior.

If a Call Taker believes an RP is making a bias-based call for service, they should:

1. Create a call for service,
2. Enter the details provided by the RP in the call narrative
3. In the Nature of Call field enter: "Supervisor review required" which will ensure that the call is not ready for dispatch, and
4. Notify the on-duty supervisor. Supervisor will review the merits of the call for service and either approve for dispatching or notify a Watch Commander (or designee)
5. Watch Commander will determine if a response will be provided and/or follow-up up with the RP for more information.

## 401.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Chief of Police or the authorized designee shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and reported annually to the DOJ (Penal Code § 13012; Penal Code § 13020).

### 401.5.1 DEMOGRAPHIC DATA PROCEDURES

All sworn officers shall provide demographic statistical data once for each individual as listed below:

1. All vehicle and bicycle detentions.
2. All pedestrian detentions
3. Anytime anyone is detained, regardless of the cause
4. Anytime anyone is searched regardless of the cause.

Officers shall provide demographic statistical data pursuant to the requirements of the RIPA statute, AB 953.

## 401.6 ADMINISTRATION

Each year, the Operations Division Captain shall review the efforts of the Department to prevent racial or biased based profiling and submit an overview, including public concerns and complaints, to the Chief of Police.

The annual report should not contain any identifying information about any specific complaint, member of the public or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors should review the annual report and discuss the results with those they are assigned to supervise.

## 401.7 TRAINING

Training on racial or bias-based profiling and review of this policy should be conducted as directed by the Personnel and Training Bureau.

All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of racial or bias-based profiling.

Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.

Each sworn member of this department who received initial racial or bias-based profiling training will thereafter be required to complete an approved refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial, identity and cultural trends (Penal Code § 13519.4(i)).

All sworn members of the Department will be required to receive annual intensive implicit bias training.

## ATTACHMENT 2. Personal Communication Devices: POLICY 701 (with recommended changes in red)

### 701.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued or funded by the Department or personally owned, while on-duty or when used for authorized work-related purposes.

This policy generically refers to all such devices as Personal Communication Devices (PCDs) but is intended to include all mobile telephones, personal digital assistants (PDAs), wireless capable tablets and similar wireless two-way communications and/or portable Internet access devices. PCD use includes, but is not limited to, placing and receiving calls, text messaging, blogging and microblogging, emailing, using video or camera features, playing games and accessing sites or services on the Internet.

### 701.2 POLICY

The Berkeley Police Department allows members to utilize department-issued or funded PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. PCDs shall only be used in the workplace on work-related matters when radio communication is not feasible. Further, personally owned PCDs shall only be used on non-work-related issues, absent exigent circumstances. Any department-issued PCD used while on-duty, or used off-duty in any manner reasonably related to the business of the Department, will be subject to monitoring and inspection consistent with the standards set forth in this policy.

The inappropriate use of a PCD while on-duty may impair officer safety. Additionally, members are advised and cautioned that the use of a personally owned PCD either on-duty or after duty hours for business-related purposes may subject the member and the member's PCD records to civil or criminal discovery or disclosure under applicable public records laws. Inappropriate use of a PCD, whether on duty or off-duty on work-related issues, includes but is not limited to any expression or speech that compromises or damages the mission, function, reputation or professionalism of the BPD.

Members who have questions regarding the application of this policy or the guidelines contained herein are encouraged to seek clarification from supervisory personnel.

### 701.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to any communication accessed, transmitted, received, or reviewed on any PCD issued or funded by the Department and

shall have no expectation of privacy in their location should the device be equipped with location-detection capabilities. This includes records of all keystrokes or web-browsing history made on the PCD. The fact that access to a database, service, or website requires a username or password will not create an expectation of privacy if it is accessed through department PCDs or networks (see the Information Technology Use Policy for additional guidance).

Members have no expectation of privacy regarding any communications while using a personally owned PCD for department-related business or when the use reasonably implicates work-related misconduct.

### 701.3.1 CALIFORNIA ELECTRONIC COMMUNICATIONS PRIVACY ACT (CALECPA)

No member is authorized to be the sole possessor of a department-issued PCD. Department-issued PCDs can be retrieved, reassigned, accessed or used by any member as directed by a supervisor without notice. Member use of a department-issued PCD and use of a personal PCD at work or for work-related business constitutes specific consent for access for department purposes. Prior to conducting an administrative search of a PCD, supervisors should consult legal counsel to ensure access is consistent with CalECPA (Penal Code § 1546; Penal Code § 1546.1).

## 701.4 DEPARTMENT-ISSUED PCD

Depending on a member's assignment and the needs of the position, the Department may, at its discretion, issue or fund a PCD. Department-issued or funded PCDs are provided as a convenience to facilitate on-duty performance only. Such devices and the associated telephone number shall remain the sole property of the Department and may be subject to inspection or monitoring (including all related records and content) at any time without notice and without cause.

### 701.4.1 CITY OF BERKELEY AR 2.15 - CITY ISSUED COMMUNICATION EQUIPMENT POLICY

Pursuant to City of Berkeley Administrative Regulation 2.15, text messages held on Department-issued or funded PCDs are to be maintained on the communication device for no less than 30 days from the date sent or received. PCDs that have text features enabled will be set to retain text message history for 30 days. Employees are not permitted to alter the text message history setting or to manually delete saved text messages.

## 701.5 PERSONALLY OWNED PCD

Members may carry a personally owned PCD while on-duty, subject to the following conditions and limitations:

a. Permission to carry a personally owned PCD may be revoked if it is used contrary to provisions of this policy.
b. The Department accepts no responsibility for loss of or damage to a personally owned PCD.
c. The PCD and any associated services shall be purchased, used and maintained solely at the member's expense.
d. The device shall not be utilized to record or disclose any business-related information, including photographs, video or the recording or transmittal of any information or material obtained or made accessible as a result of employment with the Department, without the express authorization of the Chief of Police or the authorized designee.
e. All work-related documents, emails, photographs, recordings or other public records created or received on a member's personally owned PCD should be transferred to the Berkeley Police Department and deleted from the member's PCD as soon as reasonably practicable but no later than the end of the member's shift.

Except with prior express authorization from their supervisor, members are not obligated or required to carry, access, monitor or respond to electronic communications using a personally owned PCD while off-duty. If a member is in an authorized status that allows for appropriate compensation consistent with policy or existing memorandum of understanding or collective bargaining agreements, or if the member has prior express authorization from his/her supervisor, the member may engage in business-related communications. Should members engage in such approved off-duty communications or work, members entitled to compensation shall promptly document the time worked and communicate the information to their supervisors to ensure appropriate compensation. Members who independently document off-duty department-related business activities in any manner shall promptly provide the Department with a copy of such records to ensure accurate record keeping.

## 701.6 USE OF PCD

The following protocols shall apply to all PCDs that are carried while on-duty or used to conduct department business:

a. Members may use a PCD to communicate with other personnel only in situations where the use of radio communications is either impracticable or not feasible. PCDs should not be used as a substitute for, as a way to avoid, or in lieu of regular radio communications.
b. Members are prohibited from taking pictures, audio or video recordings or making copies of any such picture or recording media unless it is directly related to official department business. Disclosure of any such information to any third party through any means, requires the express authorization of the Chief of Police or the authorized designee.
c. Members will not access social networking sites for any purpose that is not official department business. This restriction does not apply to a personally owned PCD used during authorized break times.
d. Using PCDs to harass, threaten, coerce or otherwise engage in inappropriate conduct with any third party is prohibited. Any member having knowledge of such conduct shall promptly notify a supervisor.

## 701.7 SUPERVISOR RESPONSIBILITIES

The responsibilities of supervisors include, but are not limited to:

a. Ensuring that members under their command are provided appropriate training on the use of PCDs consistent with this policy.
b. Monitoring, to the extent practicable, department-issued PCD use in the workplace and taking prompt corrective action if a member is observed or reported to be improperly using a department-issued PCD.
    1. An investigation into improper conduct should be promptly initiated when circumstances warrant.
    2. Before conducting any administrative search of a member's personally owned device, supervisors should consult with the Chief of Police or the authorized designee.

## 701.8 USE WHILE DRIVING

The use of a PCD while driving can adversely affect safety, cause unnecessary distractions and present a negative image to the public. Officers operating emergency vehicles should restrict the use of these devices to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to use the PCD.

Members who are operating department vehicles that are not authorized emergency vehicles shall not use a PCD while driving unless the device is specifically designed and

configured to allow hands-free use. In an emergency, a wireless phone may be used to place an emergency call to the Department or other emergency services agency (Vehicle Code § 23123; Vehicle Code § 23123.5). Hands-free use should be restricted to business-related calls or calls of an urgent nature.

## 701.9 OFFICIAL USE

Members are reminded that PCDs are not secure devices and conversations may be intercepted or overheard. Caution should be exercised while utilizing PCDs to ensure that sensitive information is not inadvertently transmitt

## ATTACHMENT 3. Employee Speech, Expression and Social Networking: POLICY 1029 (with recommended changes in red)

### 1029.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

### 1029.1.1 APPLICABILITY

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, email, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

### 1029.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Berkeley Police Department will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

### 1029.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect

the safety of the Berkeley Police Department employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's family or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

- Disclosing a photograph and name or address of an officer who is working undercover.
- Disclosing the address of a fellow officer.
- Otherwise disclosing where another officer can be located off-duty.

## 1029.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

To meet the department's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, on a matter of public concern). These prohibitions pertain whether the device is department-issued or personal and whether the member is on or off duty:

a. Speech or expression related to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees.
b. Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees. Examples may include:
    1. Statements that indicate disregard for Berkeley policies, the law or the state or U.S. Constitution.
    2. Expression that demonstrates support for criminal activity.
    3. Participating in sexually explicit photographs or videos for compensation or distribution.
    4. Expressions or speech that may reasonably be interpreted as exhibiting animus toward any racial group, gender identity, nationality, religion, disability, or housing status.
c. Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.
d. Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Department. For example,

a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.

e. Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Berkeley Police Department.
f. Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department for financial or personal gain, or any disclosure of such materials without the express authorization of the Chief of Police or the authorized designee.
g. Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the Berkeley Police Department on any personal or social networking or other website or web page, without the express authorization of the Chief of Police.
h. Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or department-owned, for personal purposes while on-duty, except in the following circumstances:
    1. When brief personal communication may be warranted by the circumstances (e.g., to inform family of extended hours).
    2. During authorized breaks, in which case such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Employees should take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

### 1029.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or officer associations, employees may not represent the Berkeley Police Department or identify themselves in any way that could be reasonably perceived as representing the Berkeley Police Department in order to do any of the following, unless specifically authorized by the Chief of Police (Government Code § 3206; Government Code § 3302):

a. Endorse, support, oppose or contradict any political campaign or initiative.
b. Endorse, support, oppose or contradict any social issue, cause or religion.
c. Endorse, support or oppose any product, service, company or other commercial entity.

d. Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group or officer associations), is affiliated with this department, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Berkeley Police Department.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or officer associations, on political subjects and candidates at all times while off duty.

However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

## 1029.5 PRIVACY EXPECTATION

Employees forfeit any expectation of privacy with regard to e-mails, texts or anything published or maintained through file-sharing software or any Internet site (e.g., Facebook, MySpace) that is accessed, transmitted, received or reviewed on any department technology system.

The Department reserves the right to access, audit and disclose for whatever reason any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Department. This includes the department e-mail system, computer network or any information placed into storage on any department system or device.

It also includes records of all key strokes or web-browsing history made at any department computer or over any department network.

The fact that access to a database, service or website requires a user name or password will not create an expectation of privacy if it is accessed through a department computer or network. However, the Department may not require an employee to disclose a personal user name or password or open a personal social website, except when access is reasonably believed to be relevant to the investigation of allegations of work related misconduct (Labor Code § 980).

## 1029.6 CONSIDERATIONS

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Chief of Police or authorized designee should consider include:

a. Whether the speech or conduct would negatively affect the efficiency of delivering public services.
b. Whether the speech or conduct would be contrary to the good order of the Department or the efficiency or morale of its members.
c. Whether the speech or conduct would reflect unfavorably upon the Department.
d. Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.
e. Whether similar speech or conduct has been previously authorized.
f. Whether the speech or conduct may be protected and outweighs any interest of the Department.

## 1029.7 TRAINING

Subject to available resources, the Department should provide training regarding employee speech and the use of social networking to all members of the Department.

## ATTACHMENT 4. EARLY WARNING SYSTEM: POLICY 1041 (recommended changes in red)

### 1041.1 PURPOSE

The purpose of this Order is to establish policy and procedures for an informal performance review and intervention program, the "Early Warning System" (EWS). The program monitors employee performance that may be inconsistent with professional police conduct and cooperatively engages employees to resolve areas of concern. The goal of EWS is early identification of employee performance issues and correction of these issues through constructive counseling sessions rather than the formal disciplinary process.

### 1041.2 POLICY

All employees shall participate in the EWS program and comply with the guidelines set forth in this Order.

Participation in the EWS program shall not be deemed punitive, nor is it a formal disciplinary process.

a. Notwithstanding the initiation of the EWS process, the Department retains its right and responsibilities with regard to investigation of policy violation and enforcement of employee discipline.

### 1041.3 PROCEDURES

Employee behavior or performance that is subject to EWS review includes, but is not limited to:

a. Racial, housing status, or other demographic disparities on stop, arrest, and/or search data that are higher than the department average;
b. Poor attendance and/or abusive use of leave;
c. Multiple formal sustained or not sustained complaints;
d. Multiple informal complaint inquiries;
e. Multiple use of force incidents;
f. Multiple obstructing/resisting arrest incidents;
g. Multiple vehicle collisions; and,
h. Substandard conduct/performance concerns observed by a superior officer.

The Racial and Identify Protection Act (RIPA) data will be available to supervisors in the form of an electronic data dashboard. This will provide supervisors and commanders with

the ability to review stop data created by officers assigned under their span of control. The individual stop data for individual officers should be considered a personnel record as it may provide supervisory guidance for specific officer stop data, if necessary. The public release of any RIPA data will remain anonymized as previously agreed upon Meet and Confer with the Berkeley Police Association and provisions of Government Code 3300 et.al.

Supervisors, commanders and managers shall monitor the activity of their subordinate employees to identify actual or perceived unprofessional behavior and/or substandard performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police via the Chain of Command.

Personnel assigned to the Internal Affairs Bureau (IAB) shall monitor all formal and informal allegations of employee misconduct received by their office for behavior or performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police.

Personnel assigned to the Support Services Division Report Review Detail shall forward to the Chief of Police copies of all reports pertaining to:

a. Obstruction/resisting arrests cases (i.e., Penal Code §§148, 69, etc.)

Administrative reports regarding use of force shall be forwarded to the Chief of Police as directed in Policy 300.

Quarterly audits will be conducted of employees whose behavior or performance includes any of the factors included in (a) through (h) above.

## 1041.4 MANAGEMENT OF PROGRAM RECORDS

The Office of the Chief of Police shall be responsible for aggregation and administrative management of information, data and records associated with the EWS program.

a. The administrative assistant assigned to the Office of the Chief of Police shall be responsible for preparing a quarterly report summarizing information and activities associated with the EWS program for use in administrative review.

Information, data and records associated with the EWS program are used for personnel purposes. Accordingly, they are confidential personnel files and not public records.

Documents, data and records shall be maintained by the Office of the Chief of Police for a period of two (2) years.

Access to EWS records shall be restricted to the supervisor, commander and/or manager involved in the monitoring of a particular employee, subject to the approval of the Chief of Police.

a. An individual employee may be granted access to EWS records that pertain to him/her.

## 1041.5 ADMINISTRATIVE REVIEW BOARD

The Chief of Police will convene a quarterly Review Board comprised of all Division Commanders to review program records to determine if initiation of the EWS Program is recommended.

Upon consideration of the Review Board's recommendation, the Chief of Police may direct an employee to participate in the EWS program.

## 1041.6 INITIATION OF EWS PROGRAM

Upon the direction of the Chief of Police, an informal counseling meeting will be held that may include:

a. The subject employee;
b. The employee's supervisor;
c. An Internal Affairs Bureau sergeant;
d. The employee's Lieutenant; and,
e. The employee's Division Commander, who shall preside over the meeting.

Unless impractical, the counseling meeting shall be held during the employee's regularly scheduled working hours.

a. If the meeting cannot be scheduled during the employee's regularly scheduled working hours, personnel participating while off-duty shall be compensated with compensatory time (minimum time as may be authorized by the employee's MOU) or, with Division Commander approval, allowed to flex an equal amount of time within that same work week.

The subject employee may have one fellow employee accompany him/her to the counseling meeting.

a. The accompanying employee's presence is allowed to offer general support to the subject employee, not to be an active participant in the counseling meeting.

As in general supervisor counseling meetings, the employee shall be informed of the behavioral and/or performance concern(s) at issue, and he/she shall be allowed an opportunity to offer a response.

The subject employee may be given information regarding the City of Berkeley Employee Assistance Program.

No formal document will be generated referencing this meeting, and the meeting shall not be deemed a punitive or disciplinary proceeding against the employee. There shall be no permanent record of the meeting.

## ATTACHMENT 5. STANDARDS OF CONDUCT: Policy 321 (with recommended changes in red)

### 321.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Berkeley Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

### 321.2 POLICY

The continued employment or appointment of every member of the Berkeley Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

### 321.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

### 321.3.1 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law, local ordinance, or policy. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.

The person countermanding the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

### 321.3.2 SUPERVISOR RESPONSIBILITIES

Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

a. Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.
b. Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.
c. Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.
d. The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

## 321.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances, policies, and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Employees shall at all times be courteous and civil to the public and to one another. They shall be quiet, orderly, attentive and respectful and shall exercise patience and discretion in the performance of their duties.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

## 321.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service.

### 321.5.1 LAWS, RULES AND ORDERS

a. Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.
b. Disobedience of any legal directive or order issued by any department member of a higher rank.
c. Violation of federal, state, local or administrative laws, rules, policies, or regulations.

### 321.5.2 ETHICS

a. Using or disclosing one's status as a member of the Berkeley Police Department, whether on duty or off-duty, in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
b. The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
c. The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
d. Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.
e. Offer or acceptance of a bribe or gratuity.
f. Misappropriation or misuse of public funds, property, personnel or services.

### 321.5.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM

Discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex,

sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, housing status, and any other classification or status protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, is unlawful.

### 321.5.4 RELATIONSHIPS

a. Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity, whether on duty of off-duty.
b. Engaging in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.
c. Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
d. Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
e. Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.
f. Participation in a law enforcement gang as defined by Penal Code § 13670. Participation is grounds for termination (Penal Code § 13670).

### 321.5.5 ATTENDANCE

a. Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
b. Unexcused or unauthorized absence or tardiness.
c. Excessive absenteeism or abuse of leave privileges.
d. Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.
e. Failure to sign in/out for duty on the timesheet, unless specifically authorized by a supervisor.

### 321.5.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE

a. Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member's position with this department.
    1. Members of this department shall not disclose the name, address or image of any victim of human trafficking except as authorized by law (Penal Code § 293). (b)
b. Disclosing to any unauthorized person any active investigation information.
c. The use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
d. Loaning, selling, allowing unauthorized use, giving away or appropriating any Berkeley Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.
e. Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.

### 321.5.7 EFFICIENCY

a. Neglect of duty.
b. Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.
c. Concealing, attempting to conceal, removing or destroying defective or incompetent work.
d. Unauthorized sleeping during on-duty time or assignments.
e. Failure to notify the Department within 72 hours of any change in name, residence address or contact telephone number(s).

### 321.5.8 PERFORMANCE

a. Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
b. The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal,

alteration, destruction and/or mutilation of any department record, public record, book, paper or document.

c. Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.
d. Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
e. Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
f. Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
    1. While on department premises.
    2. At any work site, while
    3. on-duty or while in uniform, or while using any department equipment or system.
    4. Gambling activity undertaken as part of an officer official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
g. Entering any place of amusement while on duty, except when necessary in the performance of duty or periodic inspection.
h. Improper political activity including:
    1. Unauthorized attendance while on-duty at official legislative or political sessions.
    2. Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty or, on department property except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
i. Engaging in political activities during assigned working hours except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
j. Joining or participating in any employee organization except an employee organization which is composed solely of peace officers which concerns itself solely and exclusively with the wages, hours, working conditions, welfare and advancement of academic and vocational training in furtherance of the police profession and which is not subordinate to any other organization.

k. Failure to secure the permission of a Commanding Officer before placing any material on a Departmental bulletin board.
l. Using departmental business cards for anything other than official business.
m. Any act on- or off-duty that brings discredit to this department.

### 321.5.9 CONDUCT

a. Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency that may result in criminal prosecution or discipline under this policy.
b. Failure of any member to report conduct or expressions of any other member that are in violation of Department policy, state law, or the Constitution.
c. Unreasonable and unwarranted force to a person encountered or a person under arrest.
d. Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
e. Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
f. Engaging in horseplay that reasonably could result in injury or property damage.
g. Engaging in discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.
h. Use of obscene, indecent, profane or derogatory language while on-duty or in uniform, or while off-duty in a way that brings discredit on the Department.
i. Engaging in criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
j. Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.
k. Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.
l. Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
m. Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.

n. Incurring unauthorized expense - Employees shall not knowingly and intentionally incur any unauthorized Departmental expense or liability without approval of a superior officer or supervisor when necessary under emergency conditions.
o. Failure to provide information to citizens - Employees shall comply whenever possible with requests by citizens for public information. If necessary, they shall direct such persons to the nearest location where information may be obtained.
p. Failure to Identify - Employees on official business shall identify themselves as Berkeley Police employees or officers. When requested, employees shall promptly state their name, rank and badge number, except when disclosure of identity could compromise safety and/or an investigation (i.e., riot situations, undercover operations, etc.).
q. Failure to maintain communication, when on duty or officially on call - Employees who are on duty or officially on call shall be directly available by normal communication or shall keep their office, supervisor, or commanding officer informed of the means by which they may be reached when not immediately available.
r. Any other on-- or off--duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

### 321.5.10 SAFETY

a. Failure to observe or violating department safety standards or safe working practices.
b. Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
c. Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
d. Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.
e. Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
f. Unsafe or improper driving habits or actions in the course of employment or appointment.
g. Any personal action contributing to a preventable traffic collision in the course of employment or appointment.
h. Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

### 321.5.11 INTOXICANTS

a. Reporting for work:
    1. Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.

b. Possession:
    1. Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.
    2. Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.

c. Intoxicants on-duty:
    1. Use of Intoxicants. Except as necessary in the performance of an official assignment, having the odor of an alcoholic beverage on the person, clothing, or breath, being under the influence of alcohol or other intoxicants, or the consumption of alcohol or other intoxicants while on duty is strictly prohibited.
    2. A Command Officer must give prior approval for any use of alcohol in the performance of an official assignment.

d. Prescription medication:
    1. Employees may use prescription medications, except medical marijuana, while on duty pursuant to the specific instructions of a physician who has advised the employee that the prescribed medication in the amount actually ingested does not adversely affect the employee's ability to safely perform their duties, including tasks that require physical coordination, mental alertness and sound judgment, such as, operating office equipment and driving a vehicle, or, in the case of sworn officers, making detentions/arrests and handling weapons.

e. Use of marijuana:
    1. Possession of marijuana, including medical marijuana, or being under the influence of marijuana on or off-duty is prohibited and may lead to disciplinary action.

f. Intoxicants in uniform:
    1. No employee off duty and in uniform, or in any part of uniform dress, shall:
        i. Consume any alcoholic beverage or other intoxicant in public view or in any place accessible to the public;
        ii. Be in public with the odor of an alcoholic beverage on the person, clothing, or breath; or
        iii. Be under the influence of alcohol or other intoxicants.

g. Intoxicants off-duty:
    1. No off-duty employee shall consume any alcoholic beverage or other intoxicant to an extent which renders one unfit to report for one's next regular tour of duty (including having the odor of an alcoholic beverage on the person), which results in the of violation of any law, or which results in the commission of an obnoxious or offensive act which might tend to discredit the Department.

## ATTACHMENT 6. Overtime Compensation Requests: Policy 1019

**The PAB does not recommend specific changes here; however, the policy should stipulate the circumstances, or types of circumstances, that would necessitate bypassing the otherwise straightforward directive in Section 1019.1.1 of this policy that "all requests to work overtime should be approved in advance." Additionally, excessive overtime should be included as a factor that triggers an early system audit.**

### 1019.1 PURPOSE AND SCOPE

It is the policy of the Department to compensate non-exempt salaried employees who work authorized overtime either by payment of wages as agreed and in effect through the Memorandum of Understanding (MOU), or by the allowance of accrual of compensatory time off. In order to qualify for either, the employee must complete and submit an Extraordinary Duty Report as soon as practical after overtime is worked.

### 1019.1.1 DEPARTMENT POLICY

Because of the nature of police work, and the specific needs of the Department, a degree of flexibility concerning overtime policies must be maintained.

Non-exempt employees are not authorized to volunteer work time to the Department. All requests to work overtime shall be approved in advance by a supervisor. If circumstances do not permit prior approval, then approval shall be sought as soon as practical during the overtime shift and in no case later than the end of shift in which the overtime is worked.

Short periods of work at the end of the normal duty day (e.g., less than one hour in duration) may be handled unofficially between the supervisor and the employee by flexing a subsequent shift schedule to compensate for the time worked rather than by submitting requests for overtime payments. If the supervisor authorizes or directs the employee to complete a form for such a period, the employee shall comply.

The individual employee may request compensatory time (aka "comp time") in lieu of receiving overtime payment.

### 1019.2 TYPES OF OVERTIME AND COMPENSATION

Time spent in a pay status but not actually worked (e.g., sick leave, vacation leave, comp time, holiday leave, etc.) shall be considered "time worked" in computing the basic forty-hour week. However, employees shall be eligible to work in an overtime capacity while

actually on such absence, but only in accordance with the provisions of the current MOU between the City of Berkeley and the employee's working group.

When a City recognized holiday falls within the workweek, the employee's basic workweek is reduced by eight hours for each holiday.

If an employee commences or terminates employment with the City within the workweek or is on suspension or leave of absence without pay during the workweek, the employee is not eligible for overtime benefits until hours worked exceed forty hours during that week.

With the exception of court overtime situations, an employee's name and overtime worked shall be reflected on a time sheet.

Unless specifically stated otherwise, all overtime is awarded at time and a half.

a. Non-sworn personnel receive double time after 12 hours in any 24-hour period.
b. Sworn personnel receive holiday overtime at the straight time rate;
c. Non-sworn personnel receive double time for Christmas and Thanksgiving.
d. An explosives technician shall receive double time for time spent (from call to completion) in dealing with explosives, whether on or off duty.
e. Special Response Team members shall receive an additional 5% pay when involved in an active SRT incident, either on or off duty.
f. Field Training Officers shall receive an additional 10% differential when actually working as a Field Training Officer.
g. The Field Training Program Sergeant shall receive a 5% salary differential while occupying that position.
h. The Homicide Sergeant shall receive a 4% salary differential. Homicide detectives shall receive a 3% salary differential.

Those holding the classification of Captain are excluded from overtime benefits.

### 1019.3 REQUEST FOR OVERTIME COMPENSATION

#### 1019.3.1 EMPLOYEES RESPONSIBILITY

Employees shall complete the Extraordinary Duty Reports immediately after working the overtime and turn them in to their immediate supervisor or the Watch Commander. Employees submitting Extraordinary Duty Reports for on-call pay when off duty shall submit the forms to their supervisor the first day after returning for work.

#### 1019.3.2 SUPERVISORS RESPONSIBILITY

The supervisor who verifies the overtime earned shall verify that the overtime was worked before approving the request.

After approval, the Extraordinary Duty Report shall be forwarded to the employee's Division Captain for final approval.

### 1019.3.3 DIVISION CAPTAIN RESPONSIBILITY

The Division Captain, after approving payment, shall then forward the report to the Payroll Clerk for review.

## 1019.4 ACCOUNTING FOR OVERTIME WORKED

Employees are to record the actual time worked in an overtime status. In some cases, the Memorandum of Understanding provides that a minimum number of hours will be paid, (e.g., four hours for Court). The supervisor will enter the actual time worked.

### 1019.4.1 ACCOUNTING FOR PORTIONS OF AN HOUR

When accounting for less than a full hour, time worked shall be rounded up to the nearest quarter of an hour as indicated by the following chart:

| TIME WORKED | INDICATE ON CARD |
|---|---|
| 1 to 15 minutes | .25 |
| 16 to 30 minutes | .50 |
| 31 to 45 minutes | .75 |
| 46 to 60 minutes | 1 hour |

### 1019.4.2 VARIATION IN TIME REPORTED

Where two or more employees are assigned to the same activity, case, or court trial and the amount of time for which payment is requested varies from that reported by the other officer, the Watch Commander or other approving supervisor may require each employee to include the reason for the variation on the Extraordinary Duty Report.

## 1019.5 RECOVERY / COMPENSATORY OVERTIME (COMP TIME)

Recovery / Compensatory overtime (comp time) is overtime credited with time rather than pay.

To obtain comp time credit the employee shall promptly submit a completed Extraordinary Duty Report for approval by both the employee's supervisor and commanding officer.

It is City and Police Department policy that employees not be permitted to accumulate excessive comp time.

a. Sworn employees are allowed to accrue up to 120 hours of comp time.
b. Non-sworn employees are allowed to accrue up to 90 hours of comp time.

Employees may be allowed comp time off only when that amount of time has been previously accumulated.

An employee who wishes to use accumulated comp time shall make such request on an Absence Report submitted to his/her supervisor, who shall determine if the absence would hinder the unit's operation and either approve or deny the request. Within the Operations Division, the final decision rests with the Patrol Staffing Lieutenant.

## 1019.6 OVERTIME / SHIFT EXTENSION

Overtime shall be defined as time worked by an employee in excess of 40 hours per week. For paid overtime to be credited, an employee is required to submit an Extraordinary Duty Report immediately following the overtime assignment.

An Extraordinary Duty Report requires approval from the employee's supervisor and commanding officer, both of whom must check the report for accuracy, ensuring that the "reason" and the paid overtime budget designations are properly stated.

a. Completed Extraordinary Duty Reports must be routed to the Division Captain for final approval.
b. Completed reports must be routed to the Payroll Clerk no later than 1400 hours on the Monday before the payday in order to be included in that pay period.

## 1019.7 HOLIDAY OVERTIME

Holiday overtime is earned in lieu of taking the time off during the same week of a holiday or when an employee works any part of a recognized City of Berkeley holiday or has that day as a regularly scheduled day off.

Holiday overtime is awarded at time for time for sworn employees; for non-sworn employees it is awarded at time and a half, however on Thanksgiving and Christmas it is awarded at double time.

Holiday overtime may be received as either paid overtime or compensatory overtime (if the maximum accrual of compensatory overtime has not been reached).

a. Sworn employees have the option of either pay or compensatory overtime.

b. Non-sworn employees require Division Captain approval for compensatory overtime.

In lieu of pay or comp time, an employee may be allowed an alternative day off during the same calendar week as the holiday with supervisor approval.

When a holiday occurs during an employee's vacation leave, the holiday shall not be charged as vacation leave and the employee's leave may be extended accordingly, with supervisor approval.

The choice of comp time or holiday pay shall be computed by the Payroll Clerk from information provided on the timesheets.

## 1019.8 COURT OVERTIME

Court overtime is defined as that overtime worked in connection with an assigned appearance before any criminal or civil court, Police Review Commission meeting or Board of Inquiry, BPD Board of Review, and any other specially approved appearance on behalf of another City department or commission.

Unless otherwise approved by a Commanding Officer, all court overtime shall be paid.

A sworn employee who makes an off-duty court appearance shall receive a minimum of four hours overtime unless his or her scheduled duty reporting time, regular shift or overtime shift is less than four hours after the scheduled court appearance in which case the employee will receive overtime in the lesser amount.

Non-sworn employees shall receive a minimum of three hours overtime unless their scheduled duty reporting time is less than three hours after the scheduled court appearance in which case the non-sworn employee will receive overtime in the lesser amount.

Overtime spent conferring with the prosecuting attorney will be considered as court overtime and part of the court session only if the employee's presence is required in court shortly after the conference.

For off duty, out of town court appearances, travel constitutes court overtime and is determined by the round-trip time from the Public Safety Building.

An employee required to attend two or more court sessions on the same day is eligible for overtime compensation during the period between the sessions if subpoenaed on his/her day off (limited to a maximum of two hours between each session) but is not eligible for session break compensation if court appearance falls on a regular duty day.

To receive court overtime credit an employee shall submit an Extraordinary Duty Report.

a. The subpoena should be attached and case number indicated if either or both are available.
b. The overtime report is to be completed by the employee and should specify the amount of time required for "testifying/conferring" or "time waiting" or indicate that they were “not needed”.
c. The employee's supervisor shall review the report for accuracy and complete the lower boxed area, indicating the court paid overtime budget code, the activity code and the proper project designation.

## 1019.9 COURT OVERTIME - TELEPHONE STANDBY

a. Sworn employees who are placed on telephone standby for court will be given comp time (in accordance with the current MOU between the City of Berkeley and the Berkeley Police Association) as follows:
    1. Duty Day: One-hour minimum comp time and hour for hour thereafter.
    2. Day Off: Two-hour minimum comp time and hour for hour thereafter.
b. To receive compensatory overtime credit for telephone standby an officer shall submit an Extraordinary Duty Report.
    1. The subpoena should be attached and case number indicated if either or both are available.
    2. The report is to be completed by the officer and shall specify the case number and the name of the Deputy District Attorney placing him/her on telephone standby.

## 1019.10 TRAINING OVERTIME

Training overtime is earned when an employee is assigned to attend a class, conference or seminar during off duty hours. Training overtime shall be reported on an Extraordinary Duty Report. To receive credit for the time spent training, a Training Time Credit Record shall be completed and routed to Personnel and Training.

Employees attending schools or classes away from the PSB will normally be credited with an eight-hour day even though the number of hours may vary due to the nature of the instruction, see also the Attendance at Conferences and Meetings Policy.

## 1019.11 EMERGENCY / EMERGENCY ON-CALL OVERTIME

An employee shall be paid or given comp time off for being placed on emergency on-call status as follows:

a. An employee who is placed on emergency on-call status on his or her regularly scheduled work day shall be paid for a minimum of one hour and at a one quarter (¼) time rate.
b. An employee who is placed on emergency on-call status on his or her regularly scheduled day off shall be paid for a minimum of two hours and at a one quarter (¼) time rate.
c. Emergency Overtime - An employee is guaranteed at least three hours overtime when called to emergency overtime duty from his or her residence. If the employee's regular reporting time is less distant than the guaranteed overtime the employee will receive overtime in that lesser amount.

# APPENDIX

## Appendix 1. City of Berkeley Contract for services with Swanson & McNamara LLP, Vendor Contract #32300109

**Contract Number:** 32300109

**Contractor Name:** Swanson & McNamara

**Contract Link:**
https://records.cityofberkeley.info/PublicAccess/api/Document/AU3fuyqXQXXZ%C3%81TG8am4tuCPyplZzCFLJZsbxFqBxmJ3aQZTBcxS%C3%89E7ECp9r6A30gZuhAImseUFcNLLtKRrEId7g%3D/

# CONTRACT

**THIS CONTRACT** is entered into on November 28, 2022, between the CITY OF BERKELEY ("City"), a Charter City organized and existing under the laws of the State of California, and Swanson & McNamara LLP ("Attorneys"), who agree as follows:

**WHEREAS,** the City of Berkeley requires the services for legal advice and consultation with the City Attorney's office concerning issues arising out of text messages allegedly sent by Sgt. Darren Kacalek, including but not limited to whether such messages were sent, who was aware of the messages and what action they took in response, whether there existed an "arrest quota" as described in the purported text messages, if so who was aware of the arrest quota and involved in its implementation, and to recommend to the appropriate authority whether and what discipline should be imposed as a result of our findings, and

**WHEREAS**, Attorneys are willing to be retained by the City in connection with said legal issues; and

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, City and Attorneys agree as follows:

1. **SCOPE OF SERVICES**

Attorneys designated herein will consult and provide legal advice and shall use the best professional skill and ability therein to the end that the most favorable results may be attained on behalf of City. The advice will be provided by Edward Swanson as lead counsel with the assistance of other associates.

2. **PAYMENT**

a. The City agrees to pay the designated attorneys at the following rates:

| | |
|---|---|
| Edward W. Swanson | $750.00 per hour |
| Mary McNamara | $750.00 per hour |
| August Gugelmann | $650.00 per hour |
| Britt Evangelist | $600.00 per hour |
| Audrey Barron | $575.00 per hour |
| Carly Bittman | $550.00 per hour |
| Paralegal | $120.00 per hour |

b. Attorneys shall furnish monthly statements to the City Attorney of City showing the number of hours devoted to said matter/s and all expenses paid during said period. Said statements shall conform as closely as practicable to the format attached hereto as Exhibit A. City shall pay Attorneys the amounts shown thereon upon approval thereof by the City Attorney of the City as soon as possible after receipt of such statements. Payment for services by non-designated attorneys will be denied, unless approved in advance by the City Attorney or his delegate.

c. The entire fees and expenses pursuant to this Contract shall not exceed the amount of $50,000 without amendment hereto. Attorneys shall not earn fees for services or incur expenses in excess of the aforesaid amount prior to executing with the City a written amendment to this contract increasing the amount payable hereunder. Attorneys shall notify the City as soon as practicable that a contract amendment increasing the amount payable may be necessary.

3. **TERM**

a. This Contract shall begin on the date it is executed by all parties and continue until Attorneys' services are no longer required by the City.

b. The City may terminate this Contract at any time upon five (5) days written notice to the other party. In the event of such termination, Attorneys will be paid a fee for services performed prior to the time of termination as specified in Paragraph 2 of this Contract, except that in no event will the amount paid exceed the full amount in Paragraph 2, as amended from time to time.

c. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Contract and deposits it with the U.S. Postal Service, registered mail, postage prepaid. For purposes of this Contract, all notices to City shall be addressed as follows:

City Attorney
City of Berkeley
2180 Milvia Street, 4th Fl.
Berkeley, CA 94704

For purposes of this Contract, all notices to Attorneys shall be addressed as follows:

Edward W. Swanson
Swanson & McNamara LLP
300 Montgomery Street, Suite 1100
San Francisco, CA 94104

4. **INDEMNIFICATION**

Attorneys, for itself and its heirs, successors and assigns, agree to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions arising out of the negligent acts or willful misconduct in the performance of this Contract by Attorneys or its officers, employees, partners, directors, subcontractors or agents.

5. **CONFORMITY WITH LAW AND SAFETY**

a. Attorneys shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Attorneys must be in accordance with these laws, ordinances, codes and regulations. Attorneys shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

b. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Attorneys shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Attorneys shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased

person(s); 2) name and address of Attorney's subcontractor, if any; 3) name and address of Attorney's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

6. **NON-DISCRIMINATION**

Attorneys hereby agree to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Ch. 13.26 as amended from time to time. In the performance of this Contract, Attorneys agree as follows:

a. Attorneys shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. Attorneys shall permit the City access to employment advertisements, blank 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, Attorneys shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

7. **INDEPENDENT CONTRACTOR**

For purposes of this Contract and for the duration of this Contract, Attorneys shall be an independent contractor and not an employee of the City. The City shall not have the right to control when, where or how the service is rendered, but shall have the right to specify the results of the service rendered pursuant to this Contract.

8. **CONFLICT OF INTEREST PROHIBITED**

a. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Ch. 3.64, neither Attorneys nor any employee, officer, director, partner or member of Attorneys, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Contract.

b. 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 Attorneys, or immediate family member of any 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 Attorneys.

c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Ch. 3.64.

d. Immediately upon discovering a breach of this paragraph City may terminate this Contract. Additionally, City may deem Attorneys a non-responsible bidder for five (5) years from the date the Contract is terminated.

9. **OPPRESSIVE STATES CONTRACTING PROHIBITION**

Unless a written exemption has been approved by the City Manager, the following provisions will apply for this agreement:

a. In accordance with Resolution No. 59,853-N.S., Attorneys certify that they have no contractual relations with, and agree during the term of this Contract to forego contractual relations to provide personal services to, the following entities:

(1) The governing regime in any Oppressive State.
(2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
(3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. Appendix A to Resolution No. 59,853-N.S. designates the following as Oppressive States for the purposes of this Contract: Tibet Autonomous Region and the provinces of Ado, Kham, and U-Tsang.

c. Attorneys' failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract pursuant to Section 3. In the event that the City terminates Attorneys due to a default under this provision, City may deem Attorneys a non-responsible bidder for five (5) years from the date this Contract is terminated.

10. **SETOFF AGAINST DEBTS**

Attorneys agree that City may deduct from any payments due to Attorneys under this Contract any monies that Attorneys owe City under any ordinance, contract or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

11. **NUCLEAR FREE BERKELEY**

Attorneys agree to comply with B.M.C. Ch. 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

12. **GOVERNING LAW**

The laws of the State of California shall govern this Contract.

13. **AMENDMENTS**

The terms and conditions of this Contract shall not be altered or otherwise modified except by a written amendment to this Contract executed by City and Attorneys.

14. **CONSULTANTS TO SUBMIT STATEMENTS OF ECONOMIC INTEREST**

The City's Conflict of Interest Code, Resolution No. 51,425-N.S., as amended, requires every consultant to disclose conflicts of interest by filing a Statement of Economic Interest (Form 730). Attorneys serving as consultants to the City under this Contract agree to file such statements with the City Clerk at the beginning of the contract period and upon termination of the Contract.

15. **CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Attorneys have obtained a City business license as required by B.M.C. Ch. 9.04, and its license number is written below; or, Attorneys are exempt from the provisions of B.M.C. Ch. 9.04 and have written below the specific B.M.C. section under which it is exempt. Attorneys shall pay all state and federal income taxes and any other taxes due. **Attorneys certify under penalty of perjury that the taxpayer identification number written below is correct.**

Business License No. [application submitted]
Taxpayer Identification No. 94-3309866

16. **RECYCLED PAPER FOR WRITTEN REPORTS**

If Attorneys are required by this Contract to prepare a written report or study, Attorneys shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin papers, and when such paper is available at the time it is needed. For the purposes of this Contract, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Attorneys shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the page whenever practical.

17. **INSURANCE**

a. Attorneys shall maintain at all times during the performance of this Contract a professional liability insurance policy in the minimum amount of $1,000,000 to cover any claims arising out of Attorneys' performance of services under this Contract. Attorneys shall provide an original Certificate of Insurance evidencing the required coverage.

b. If Attorneys employ any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the City Attorney; 2) provide for a waiver of any right of subrogation against City to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Risk Manager.

c. Attorneys shall forward all insurance documents to:

City Attorney
City of Berkeley
2180 Milvia St., 4th Floor
Berkeley, CA 94704

18. **BERKELEY LIVING WAGE ORDINANCE**

a. Attorneys hereby agree to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Attorneys are currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Attorneys will be required to provide all eligible employees with City mandated minimum compensation during the term of this Contract, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. Attorneys expressly acknowledge that, even if Attorneys are not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Attorneys to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

b. If Attorneys are currently subject to the Berkeley Living Wage Ordinance, Attorneys shall be required to maintain monthly records of those employees providing service

under the Contract. These records shall include the total number of hours worked, the number of hours spent providing service under this Contract, the hourly rate paid, and the amount paid by Attorneys for health benefits, if any, for each of its employees providing services under the Contract. Attorneys agree to supply City with any records it deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 20.

c. If Attorneys are currently subject to the Berkeley Living Wage Ordinance, Attorneys shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which Attorneys engages to execute its responsibilities under this Contract. All subcontractor employees who spend 25% or more of their compensated time engaged in work directly related to this Contract shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

d. If Attorneys fail to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Attorneys' failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this Contract pursuant to Section 3. In the event that City terminates Attorneys due to a default under this provision, City may deem Attorneys a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Attorneys may be responsible for liquidated damage in the amount of $50 per employee per day for each and every instance of an under-payment to an employee. It is mutually understood and agreed that Attorneys failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Attorneys' breach. City may deduct any assessed liquidated damages from any payments otherwise due Attorneys.

19. **BERKELEY EQUAL BENEFITS ORDINANCE**

a. Attorneys hereby agree to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Attorneys are currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Attorneys will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this contract, as well as comply with the terms enumerated herein.

b. If Attorneys are currently or becomes subject to the Berkeley Equal Benefits Ordinance, Attorneys agree to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 20.

c. If Attorneys fail to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Attorneys' failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this contract pursuant to Section 3. In the event the City terminates this contract due to a default by Attorneys under this provision, the City may deem Attorneys a non-responsible bidder for not more than five (5) years from the date this

Contract is terminated.

In addition, at City's sole discretion, Attorneys 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 Attorneys' 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 Attorneys' breach. City may deduct any assessed liquidated damages from any payments otherwise due Attorneys.

20. **SANCTUARY CITY CONTRACTING**

Contractor hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Contractor 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.

21. **AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Attorneys' financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such audit, Attorneys agree to provide the City Auditor with reasonable access to Attorneys' employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Attorneys an opportunity to discuss and respond to any findings before a final audit report is filed.

22. **ENTIRE CONTRACT**

a. The terms and conditions of this Contract, all exhibits attached and any documents expressly incorporated by reference represent the entire Contract between the parties with respect to the subject matter of this Contract.

b. This Contract shall supersede any and all prior contracts, oral or written, regarding the subject matter between City and Attorneys. No other contract, statement, or promise relating to the subject matter of this Contract shall be valid or binding except by a written amendment to this Contract.

c. If any conflicts arise between the terms and conditions of this Contract and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Contract shall control.

**IN WITNESS WHEREOF**, City and Attorneys have executed this Contract as of the date written on the first paragraph of this Contract.

CITY OF BERKELEY

By: _____
City Attorney

Registered by:

_____
City Auditor

Attest:

_____
ASST. City Clerk

Registered on behalf of the City Auditor:

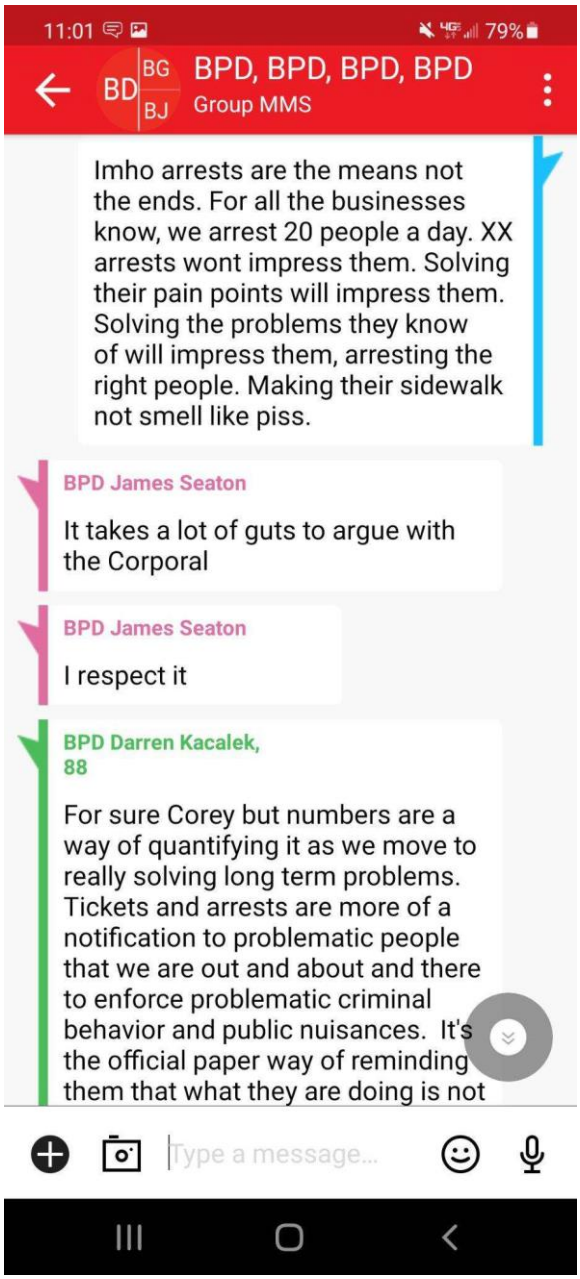
_____
Finance Department

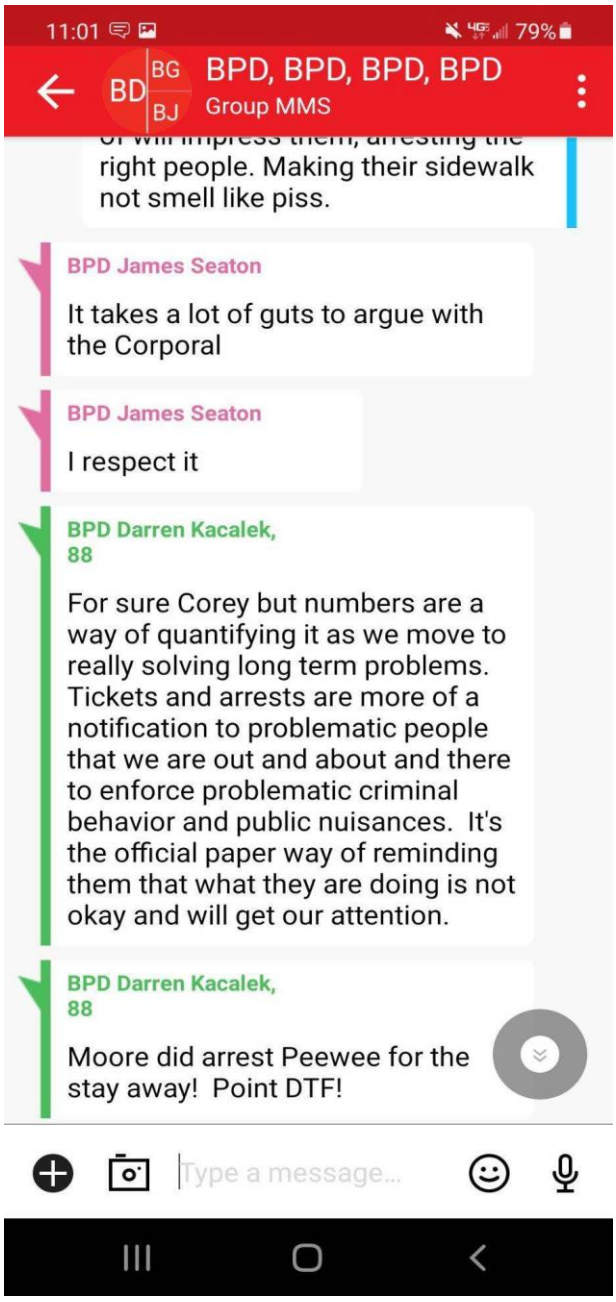
ATTORNEYS

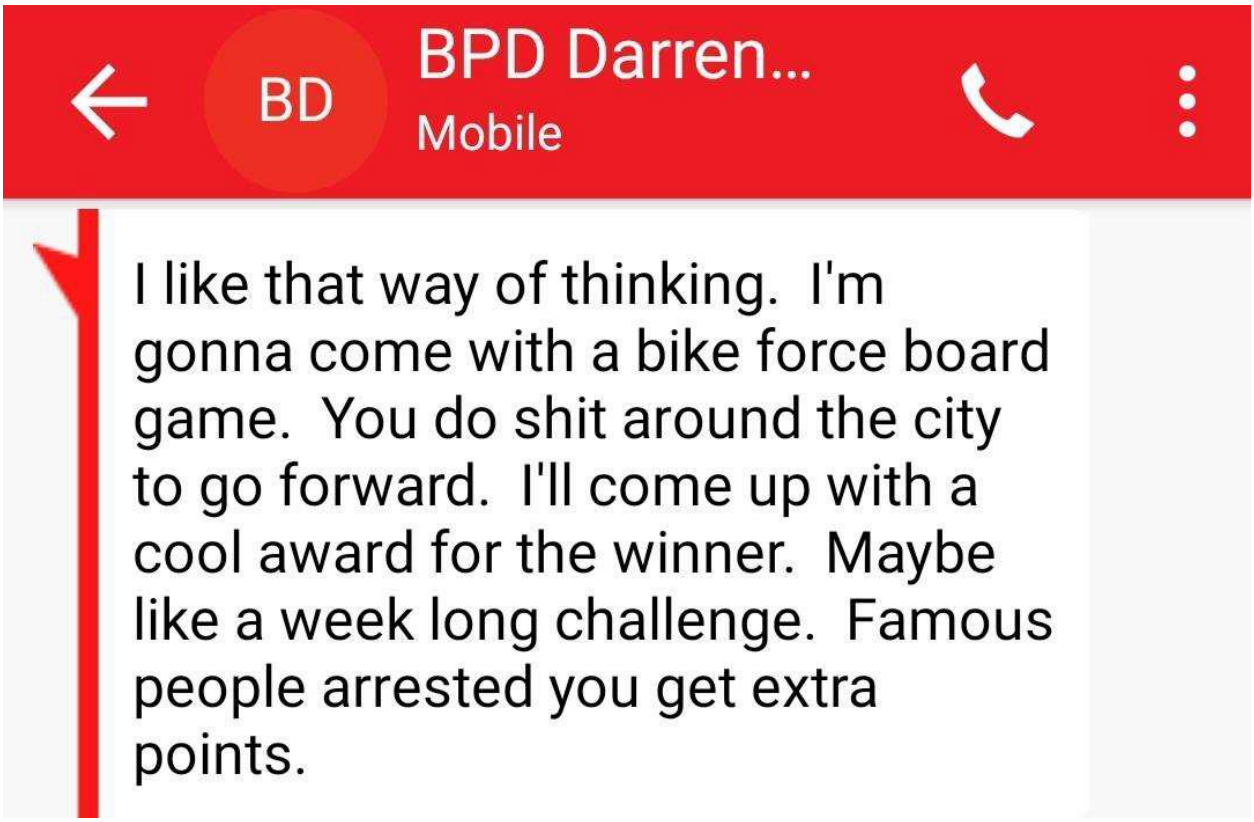
By Edward W. Swanson
Swanson & McNamara LLP

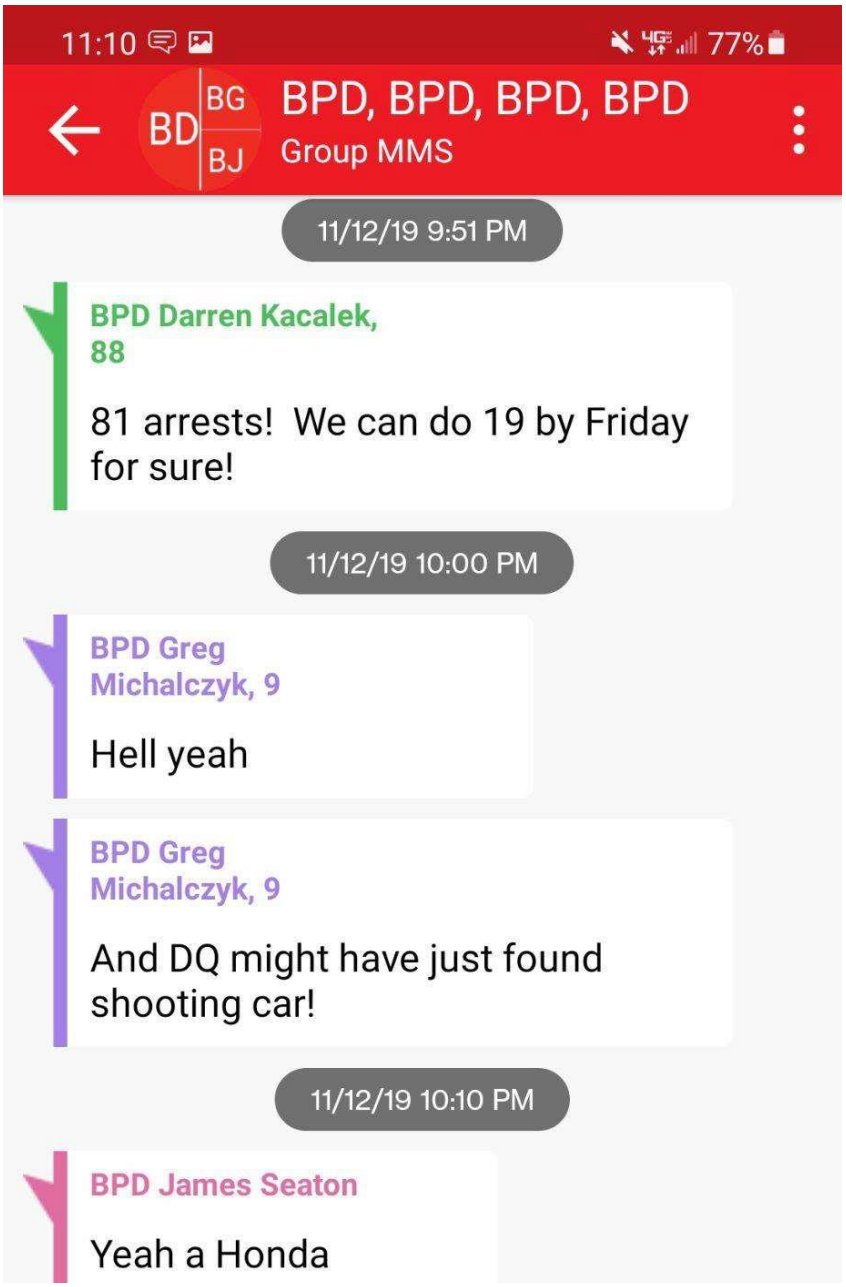
Taxpayer Identification No.
Incorporated: Yes (X) No ( )
Certified Woman Business Enterprise: Yes ( ) No (X)
Certified Minority Business Enterprise: Yes ( ) No(X)
If yes, state ethnicity: _____
Certified Disadvantaged Business Enterprise: Yes ( ) No (X)

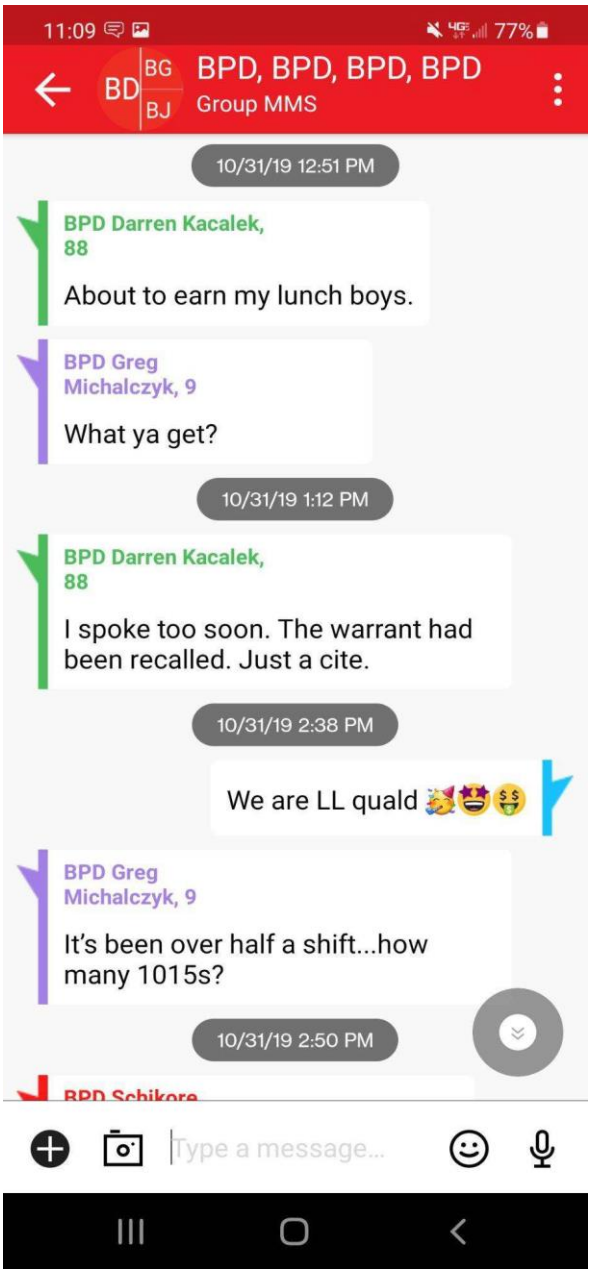
## Appendix 2. Text Messages Sent by the Downtown Task Force and Bike Unit Members

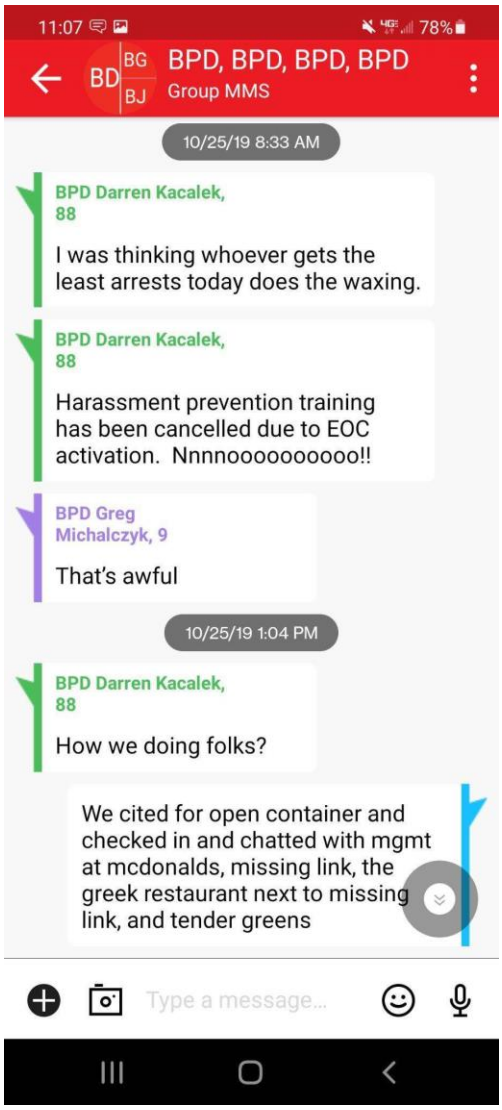

11:01
79%
BD
BG
BJ
BPD, BPD, BPD, BPD
Group MMS
Imho arrests are the means not the ends. For all the businesses know, we arrest 20 people a day. XX arrests wont impress them. Solving their pain points will impress them. Solving the problems they know of will impress them, arresting the right people. Making their sidewalk not smell like piss.
BPD James Seaton
It takes a lot of guts to argue with the Corporal
BPD James Seaton
I respect it
BPD Darren Kacalek, 88
For sure Corey but numbers are a way of quantifying it as we move to really solving long term problems. Tickets and arrests are more of a notification to problematic people that we are out and about and there to enforce problematic criminal behavior and public nuisances. It's the official paper way of reminding them that what they are doing is not
Type a message...

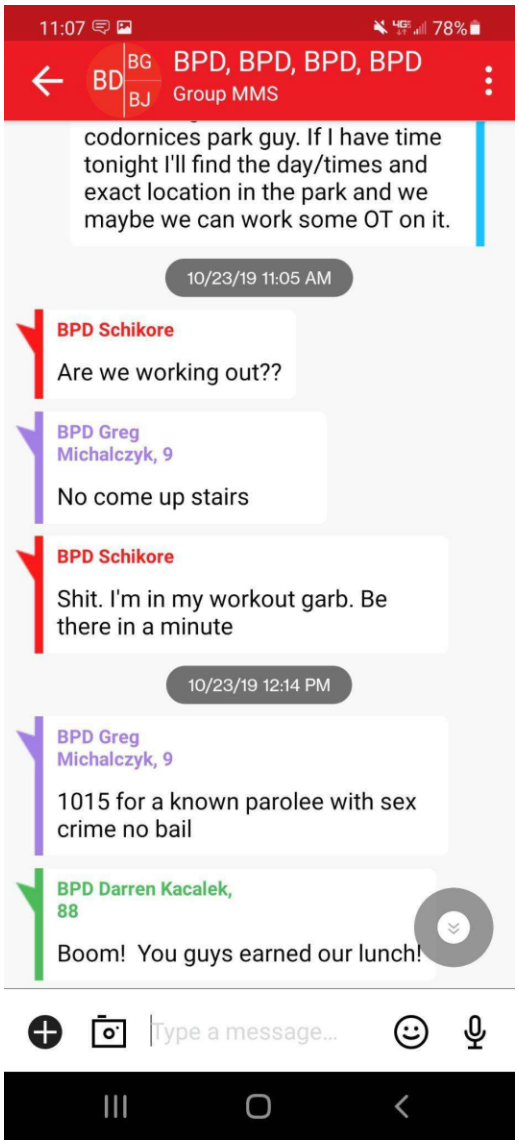

11:01
79%
BD
BG
BJ
BPD, BPD, BPD, BPD
Group MMS
right people. Making their sidewalk not smell like piss.
BPD James Seaton
It takes a lot of guts to argue with the Corporal
BPD James Seaton
I respect it
BPD Darren Kacalek, 88
For sure Corey but numbers are a way of quantifying it as we move to really solving long term problems. Tickets and arrests are more of a notification to problematic people that we are out and about and there to enforce problematic criminal behavior and public nuisances. It's the official paper way of reminding them that what they are doing is not okay and will get our attention.
BPD Darren Kacalek, 88
Moore did arrest Peewee for the stay away! Point DTF!
Type a message...

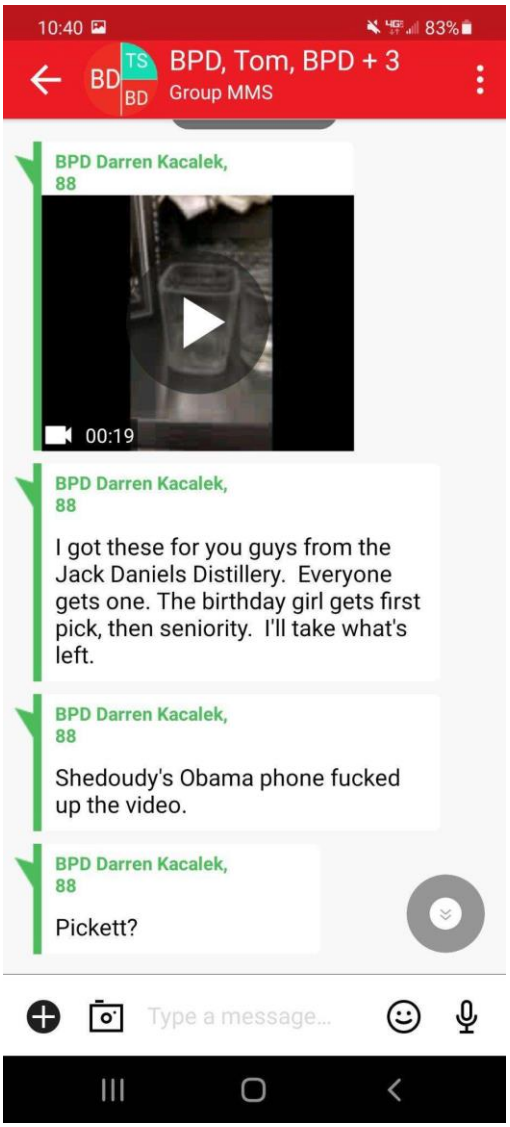

BD
BPD Darren...
Mobile
I like that way of thinking. I'm gonna come with a bike force board game. You do shit around the city to go forward. I'll come up with a cool award for the winner. Maybe like a week long challenge. Famous people arrested you get extra points.

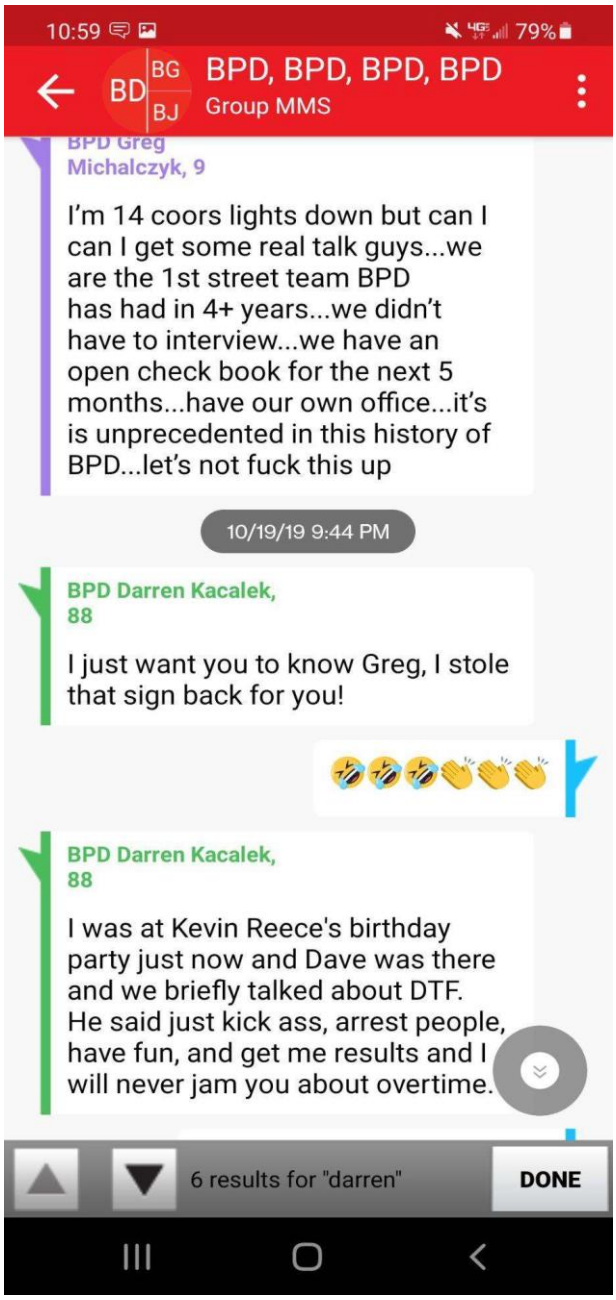

11:10
77%
BD
BG
BJ
BPD, BPD, BPD, BPD
Group MMS
11/12/19 9:51 PM
BPD Darren Kacalek, 88
81 arrests! We can do 19 by Friday for sure!
11/12/19 10:00 PM
BPD Greg Michalczyk, 9
Hell yeah
BPD Greg Michalczyk, 9
And DQ might have just found shooting car!
11/12/19 10:10 PM
BPD James Seaton
Yeah a Honda

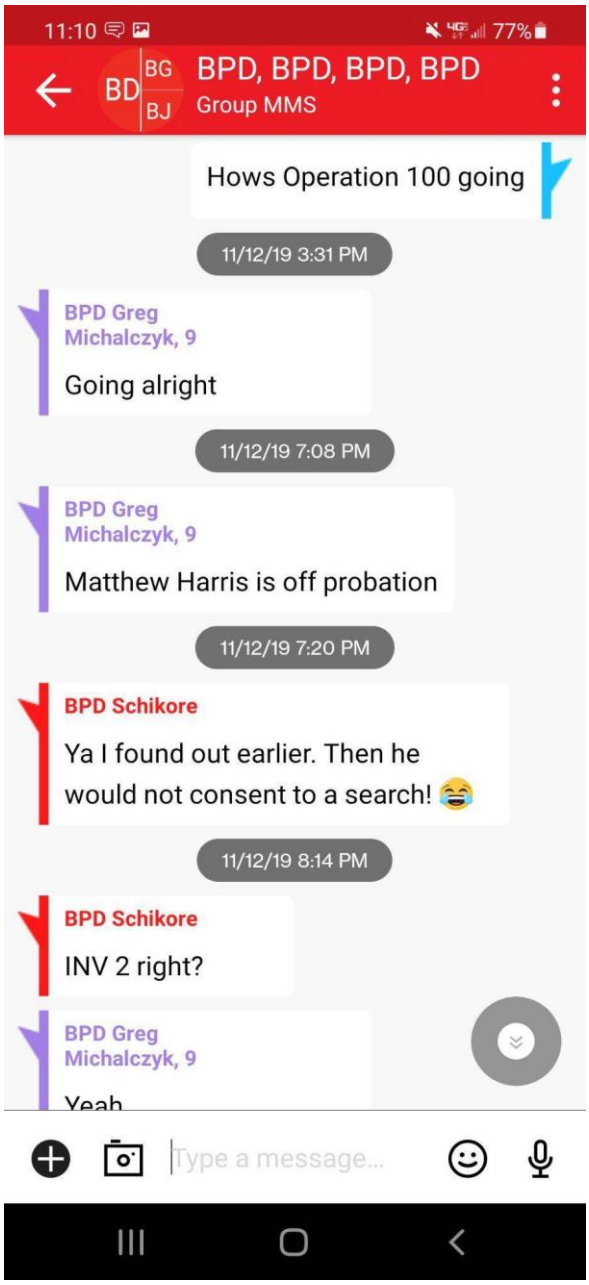

11:09
77%
BD
BG
BJ
BPD, BPD, BPD, BPD
Group MMS
10/31/19 12:51 PM
BPD Darren Kacalek, 88
About to earn my lunch boys.
BPD Greg Michalczyk, 9
What ya get?
10/31/19 1:12 PM
BPD Darren Kacalek, 88
I spoke too soon. The warrant had been recalled. Just a cite.
10/31/19 2:38 PM
We are LL quald
BPD Greg Michalczyk, 9
It's been over half a shift...how many 1015s?
10/31/19 2:50 PM
Type a message...

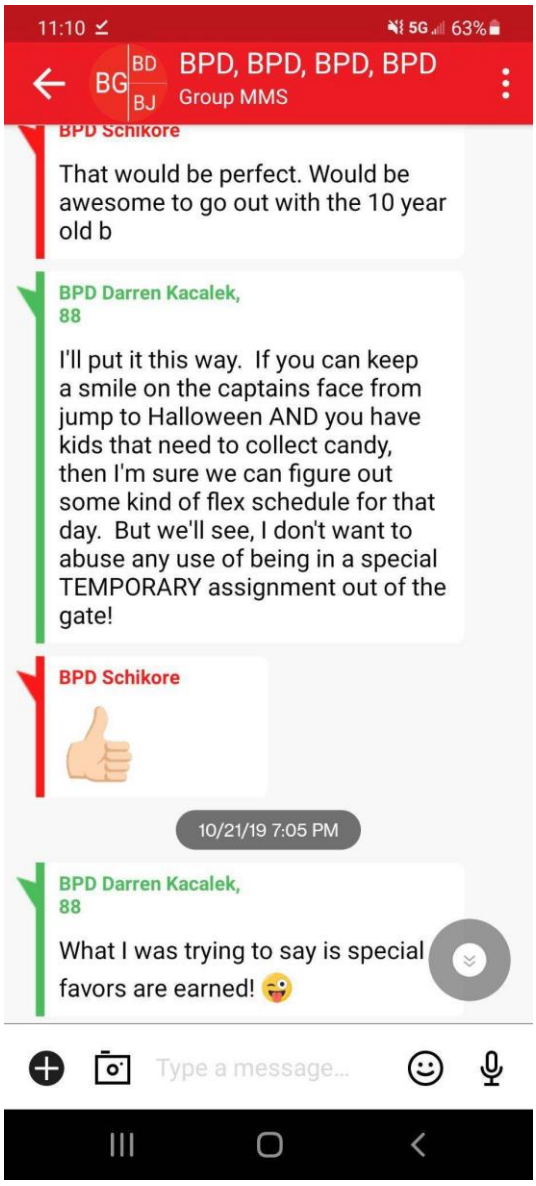

11:07
78%
BD
BG
BJ
BPD, BPD, BPD, BPD
Group MMS
10/25/19 8:33 AM
BPD Darren Kacalek, 88
I was thinking whoever gets the least arrests today does the waxing.
BPD Darren Kacalek, 88
Harassment prevention training has been cancelled due to EOC activation. Nnnnooooooooooo!!
BPD Greg Michalczyk, 9
That's awful
10/25/19 1:04 PM
BPD Darren Kacalek, 88
How we doing folks?
We cited for open container and checked in and chatted with mgmt at mcdonalds, missing link, the greek restaurant next to missing link, and tender greens
Type a message...

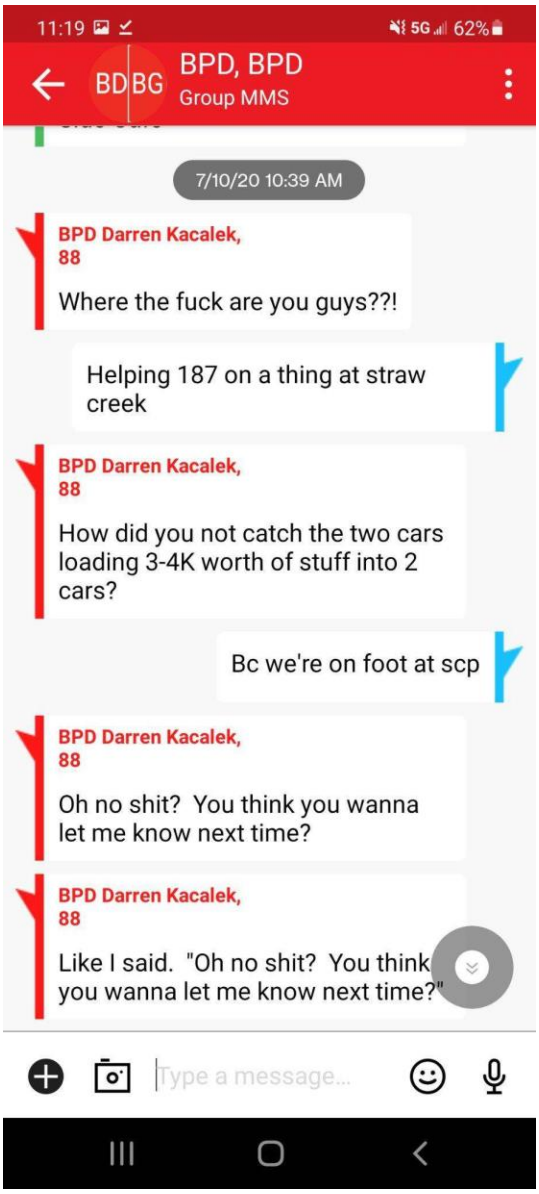

11:07
78%
BD
BG
BJ
BPD, BPD, BPD, BPD
Group MMS
codornices park guy. If I have time tonight I'll find the day/times and exact location in the park and we maybe we can work some OT on it.
10/23/19 11:05 AM
BPD Schikore
Are we working out??
BPD Greg Michalczyk, 9
No come up stairs
BPD Schikore
Shit. I'm in my workout garb. Be there in a minute
10/23/19 12:14 PM
BPD Greg Michalczyk, 9
1015 for a known parolee with sex crime no bail
BPD Darren Kacalek, 88
Boom! You guys earned our lunch!
Type a message...

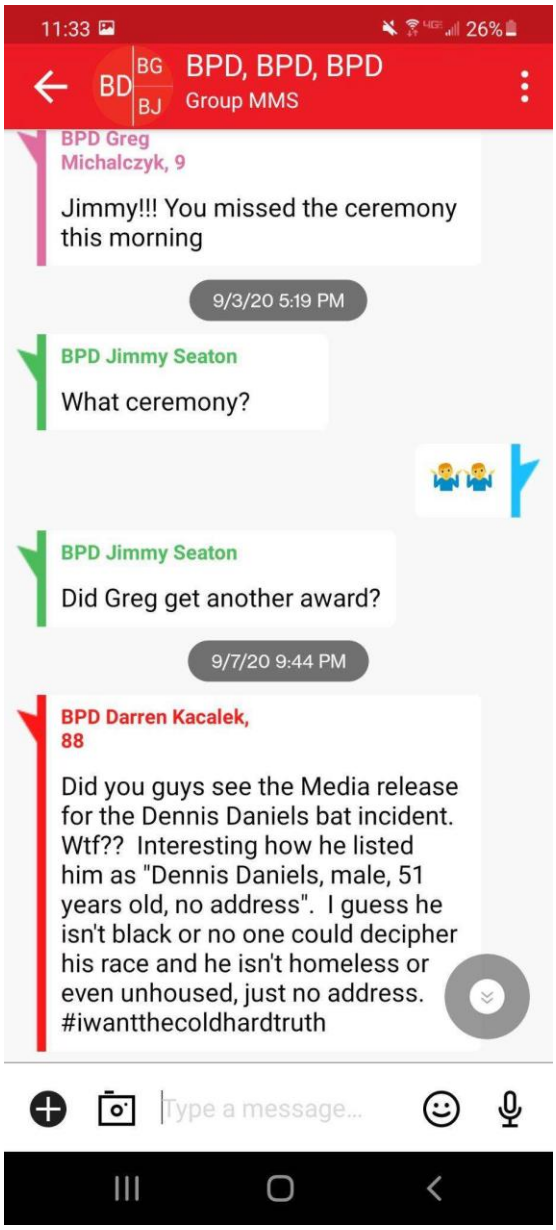

10:40
83%
BD
TS
BD
BPD, Tom, BPD + 3
Group MMS
BPD Darren Kacalek,
88
00:19
BPD Darren Kacalek,
88
I got these for you guys from the Jack Daniels Distillery. Everyone gets one. The birthday girl gets first pick, then seniority. I'll take what's left.
BPD Darren Kacalek,
88
Shedoudy's Obama phone fucked up the video.
BPD Darren Kacalek,
88
Pickett?
Type a message...

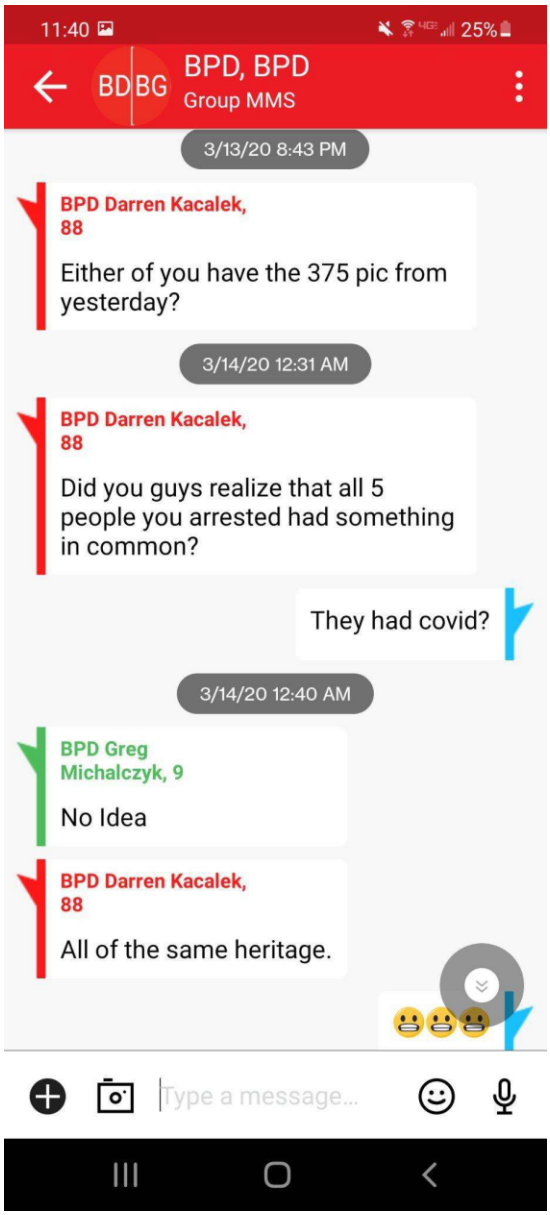

10:59
79%
BD
BG
BJ
BPD, BPD, BPD, BPD
Group MMS
BPD Greg Michalczyk, 9
I'm 14 coors lights down but can I can I get some real talk guys...we are the 1st street team BPD has had in 4+ years...we didn't have to interview...we have an open check book for the next 5 months...have our own office...it's is unprecedented in this history of BPD...let's not fuck this up
10/19/19 9:44 PM
BPD Darren Kacalek, 88
I just want you to know Greg, I stole that sign back for you!
BPD Darren Kacalek, 88
I was at Kevin Reece's birthday party just now and Dave was there and we briefly talked about DTF. He said just kick ass, arrest people, have fun, and get me results and I will never jam you about overtime.
6 results for "darren"
DONE

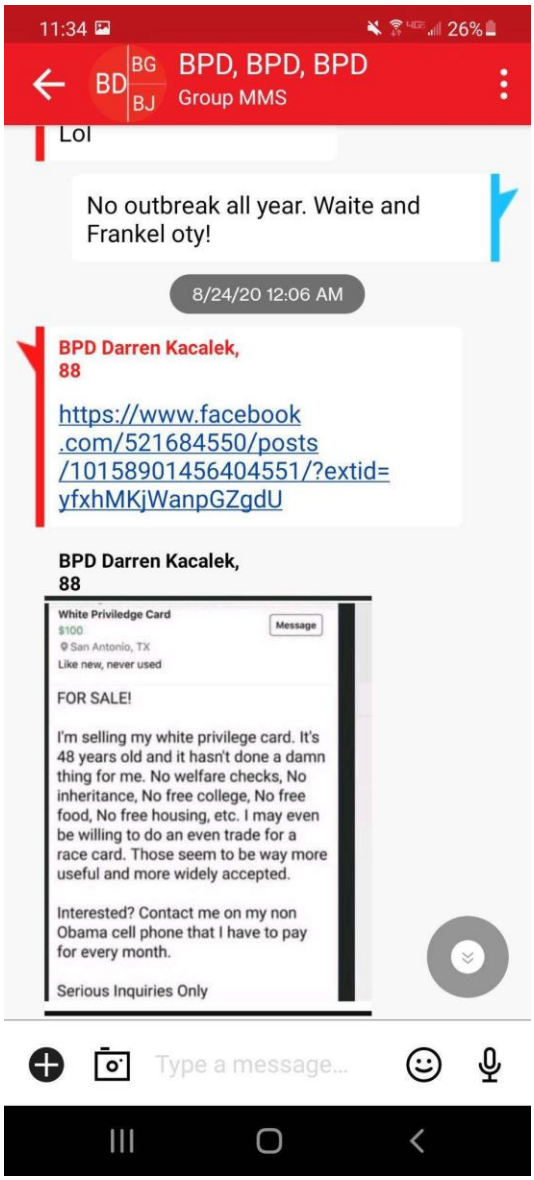

11:10
77%
BD
BG
BJ
BPD, BPD, BPD, BPD
Group MMS
Hows Operation 100 going
11/12/19 3:31 PM
BPD Greg Michalczyk, 9
Going alright
11/12/19 7:08 PM
BPD Greg Michalczyk, 9
Matthew Harris is off probation
11/12/19 7:20 PM
BPD Schikore
Ya I found out earlier. Then he would not consent to a search!
11/12/19 8:14 PM
BPD Schikore
INV 2 right?
BPD Greg Michalczyk, 9
Yeah
Type a message...

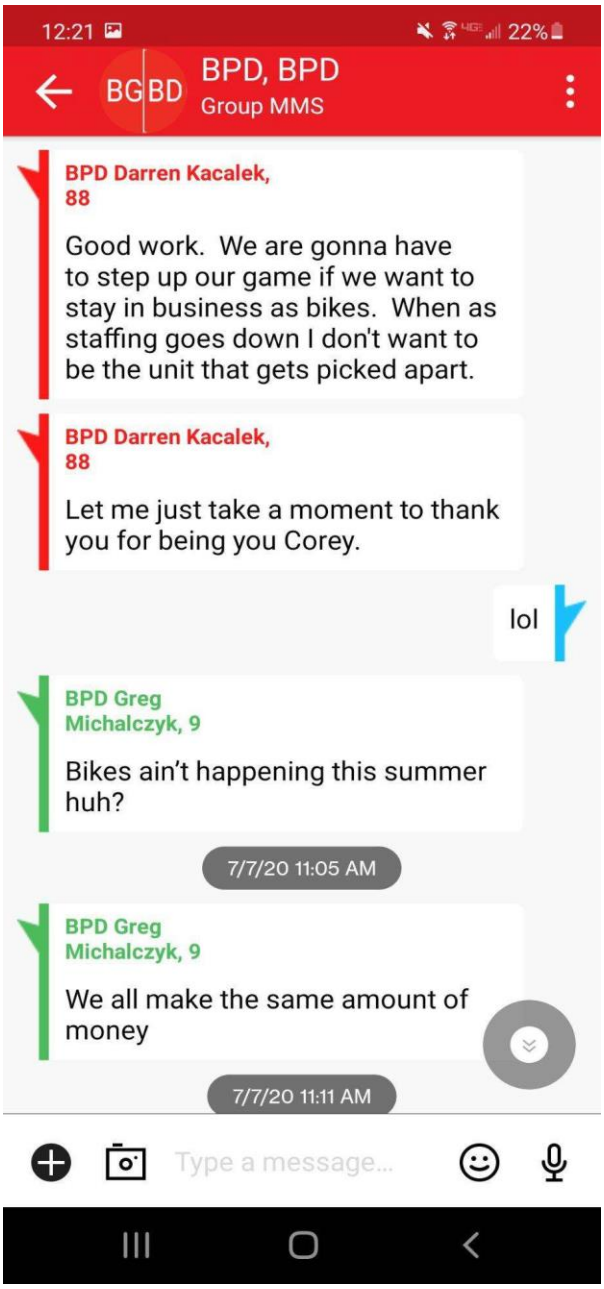

11:10
5G 63%
BG
BD
BJ
BPD, BPD, BPD, BPD
Group MMS
BPD Schikore
That would be perfect. Would be awesome to go out with the 10 year old b
BPD Darren Kacalek, 88
I'll put it this way. If you can keep a smile on the captains face from jump to Halloween AND you have kids that need to collect candy, then I'm sure we can figure out some kind of flex schedule for that day. But we'll see, I don't want to abuse any use of being in a special TEMPORARY assignment out of the gate!
BPD Schikore
10/21/19 7:05 PM
BPD Darren Kacalek, 88
What I was trying to say is special favors are earned!
Type a message...


11:19
5G 62%
BD BG
BPD, BPD
Group MMS
7/10/20 10:39 AM
BPD Darren Kacalek, 88
Where the fuck are you guys??!
Helping 187 on a thing at straw creek
BPD Darren Kacalek, 88
How did you not catch the two cars loading 3-4K worth of stuff into 2 cars?
Bc we're on foot at scp
BPD Darren Kacalek, 88
Oh no shit? You think you wanna let me know next time?
BPD Darren Kacalek, 88
Like I said. "Oh no shit? You think you wanna let me know next time?"
Type a message...


11:33
26%
BD
BG
BJ
BPD, BPD, BPD
Group MMS
BPD Greg Michalczyk, 9
Jimmy!!! You missed the ceremony this morning
9/3/20 5:19 PM
BPD Jimmy Seaton
What ceremony?
BPD Jimmy Seaton
Did Greg get another award?
9/7/20 9:44 PM
BPD Darren Kacalek, 88
Did you guys see the Media release for the Dennis Daniels bat incident. Wtf?? Interesting how he listed him as "Dennis Daniels, male, 51 years old, no address". I guess he isn't black or no one could decipher his race and he isn't homeless or even unhoused, just no address. #iwantthecoldhardtruth
Type a message...


11:40
25%
BD BG
BPD, BPD
Group MMS
3/13/20 8:43 PM
BPD Darren Kacalek, 88
Either of you have the 375 pic from yesterday?
3/14/20 12:31 AM
BPD Darren Kacalek, 88
Did you guys realize that all 5 people you arrested had something in common?
They had covid?
3/14/20 12:40 AM
BPD Greg Michalczyk, 9
No Idea
BPD Darren Kacalek, 88
All of the same heritage.
Type a message...


11:34
26%
BD
BG
BJ
BPD, BPD, BPD
Group MMS
Lol
No outbreak all year. Waite and Frankel oty!
8/24/20 12:06 AM
BPD Darren Kacalek, 88
https://www.facebook.com/521684550/posts/10158901456404551/?extid=yfxhMKjWanpGZgdU
BPD Darren Kacalek, 88
White Priviledge Card
$100
San Antonio, TX
Like new, never used
Message
FOR SALE!
I'm selling my white privilege card. It's 48 years old and it hasn't done a damn thing for me. No welfare checks, No inheritance, No free college, No free food, No free housing, etc. I may even be willing to do an even trade for a race card. Those seem to be way more useful and more widely accepted.
Interested? Contact me on my non Obama cell phone that I have to pay for every month.
Serious Inquiries Only
Type a message...


12:21
22%
BG BD
BPD, BPD
Group MMS
BPD Darren Kacalek, 88
Good work. We are gonna have to step up our game if we want to stay in business as bikes. When as staffing goes down I don't want to be the unit that gets picked apart.
BPD Darren Kacalek, 88
Let me just take a moment to thank you for being you Corey.
lol
BPD Greg Michalczyk, 9
Bikes ain't happening this summer huh?
7/7/20 11:05 AM
BPD Greg Michalczyk, 9
We all make the same amount of money
7/7/20 11:11 AM
Type a message...

## Appendix 3. Sample Quota Ban Policy

STOP, ARREST, AND TICKET QUOTAS PROHIBITION

XXX.1 PURPOSE AND SCOPE

The Berkeley Police Department (BPD) is committed to fostering fair and equitable law enforcement practices that prioritize public safety and community well-being. The purpose of this policy is to explicitly prohibit the imposition of stop, ticket, and arrest quotas in any law enforcement activities conducted by the Berkeley Police Department. This goes beyond the parameters defined in the California Vehicle Code § 41603.

Stop, ticket and arrest quotas, whether formal or informal, establish numerical targets for officers, compelling them to issue citations or make arrests based on predetermined numbers rather than legitimate law enforcement needs. This policy aims to uphold the values of fairness, impartiality, and community-focused policing, ensuring that enforcement actions are driven by genuine circumstances and the safety needs of our community.

This policy reflects the Berkeley Police Department's unwavering dedication to maintaining high standards of ethical conduct and professionalism while serving and safeguarding the interests of the Berkeley community.

XXX.2 POLICY

This policy unequivocally prohibits the use of quotas **(whether informal or formal)** to require or encourage officers to meet predetermined numerical targets for stops, tickets, or arrests.

The Berkeley Police Department is committed to promoting public trust, transparency, and accountability in all law enforcement endeavors. This policy serves as a cornerstone in guiding our officers to conduct themselves with integrity, professionalism, and a commitment to community service, devoid of the imposition of arbitrary enforcement quotas that could compromise these principles.

Officers are encouraged to prioritize public safety and law enforcement compliance based on objective circumstances and genuine enforcement necessities, fostering a culture of equitable and community-oriented policing.

XXX.3 DEFINITION

The following words and terms shall have these assigned meanings throughout the Policy Manual, unless it is apparent from the content that they have a different meaning:

**STOP, ARREST AND TICKET QUOTAS PROHIBITION**

**Arrest quota** means any policy, practice, or directive that explicitly requires or pressures a peace officer or parking enforcement employee to make a certain number of arrests.

**Ticket quota** means any policy, practice, or directive that explicitly requires or pressures a peace officer or parking enforcement employee to issue a certain number of citations or tickets.

**Informal quota** means any policy, practice, or directive that implicitly requires or pressures a peace officer or parking enforcement employee to make a certain number of arrests or issue a certain number of citations. This includes, but is not limited to, the following:

(a) Talking about specific stop, arrest, or citation targets in a way that suggests they are important.
(b) Linking performance evaluations or promotions to arrest or citation numbers.
(c) Providing incentives such as barbecue (BBQ), pizza, gift cards, car wash coupons, and trophies to officers who meet quotas.
(d) Offering overtime.
(e) Establishing adverse employment actions such as denial of days off, transfers, undesirable assignments, and termination.
(f) Creating a competitive environment where officers are encouraged to make more arrests or issue more citations than their colleagues.
(g) Making jokes or innuendos that incentivize achieving a specific number of stops, arrests, or tickets.

CITY OF BERKELEY

OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

# COMPANION REPORT TO BERKELEY POLICE DEPARTMENT TEXTING ALLEGATIONS: AN INDEPENDENT INVESTIGATION BY THE POLICE ACCOUNTABILITY BOARD

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# PREFACE

On November 10, 2022 former Berkeley Police Department (BPD) Officer Corey Shedoudy brought allegations forward regarding improper conducted committed by BPD's Downtown Task Force and Bike Unit (DTF). The explicit nature of the texts and the gravity of the accusations of arrest quotas and questionable legal tactics jolted the Berkeley community and its political leaders. In response to these serious allegations, the City, through direction of the city manager, hired an external law firm to investigate the authenticity and implications of these texts, which were ultimately confirmed as genuine. The Police Accountability Board (PAB) conducted an independent investigation of the policies and practices related to the allegations. The report was approved for submission to the Council on July 10th, 2024.

According to the City of Berkeley Commissioners' Manual[1], a companion report from the City Manager is required when the City Manager differs with the recommendations of a commission or wishes to include additional or different information. While the Commissioners' Manual does not specifically reference a companion report from the Director of Police Accountability (DPA), the DPA, as a Charter officer and secretary to the Police Accountability Board (PAB), when supporting the PAB, has in effect the same authority as it relates to the City Manager's relationship with other Boards and Commissions. Therefore, this companion report aims to augment the recommendations by providing additional objective analysis. This companion report is intended to complement the PAB report, ensuring the City Council fully understands the issue and the necessary actions.

# ACKNOWLEDGEMENTS


- Former Board Members who served during the revelation of these allegations: Nathan Mizell, Ismael Ramsey, Dobbie Levine, and Cheryl Owens
- Berkeley Copwatch for sharing the analysis of their independent investigation
- Community member Mr. Charles Clarke for his independent analysis
- Late Assemblyman John Miller for his contributions to reducing unjust practices in policing.
- People of Berkeley


# EXECUTIVE SUMMARY

The objective of this companion report is to propose additional necessary reforms to prevent future occurrences and institutional missteps that may still occur without firm city council, city manager and or community guidance. The report emphasizes the importance of transparency, accountability, and community trust in policing practices.

To that end the ODPA recommends the following actions for **COUNCIL**:

[1] CITY OF BERKELEY COMMISSIONERS' MANUAL 2019 EDITION: BACKGROUND INFORMATION RULES AND PROCEDURES
https://berkeleyca.gov/sites/default/files/2022-03/Commissioners-Manual.pdf

1. Call on the California Legislature to amend Government Code section 12519[2] to include heads of civilian oversight agencies as one of the enumerated requestors.
2. Direct the City Manager and Chief of Police, with input from the newly formed Office of Strategic Planning and Accountability (OSPA), to procure the services of a vendor that can conduct real-time audits and analysis of BWC footage.
3. Direct the City Manager to work with the City Attorney's Office to establish a protocol, subject to Council approval, with clear guidelines for how the City Manager should handle complaints against the Chief of Police including designating the PAB/ODPA as an investigative body. (consider PRC Ordinance: "*that all such complaints filed with other offices, boards, bureaus, and departments of the City, including the Police Department, shall be referred to the Commission for investigation*").
4. Direct the City Manager to work with the City Attorney's Office to establish a communications policy, corresponding training, and compliance mechanisms to ensure impartiality and neutrality during the pendency of an active personnel investigation
5. Direct the City Manager and Chief of Police, with input from the OSPA, to expand the Berkeley Police Transparency Hub by including data on the prosecutorial outcomes of each arrest made by the BPD.
6. Direct the City Manager and Chief of Police, with input from the OSPA, to work with the PAB/ODPA to research the:
    - Viability and the fitness for law enforcement accreditation for BPD.
    - Viability and the fitness for utilizing a law enforcement agency assessment tool like NYU's Policing Project SAJE tool[3]
7. Direct the City Manager and Chief of Police, with input from the OSPA, to utilize the guidelines in the DOJ report " Considerations for Specialized Units A Guide for State and Local Law Enforcement Agencies to Ensure Appropriateness, Effectiveness, and Accountability Specialized Units A Guide for State and Local Law Enforcement Agencies to Ensure Appropriateness, Effectiveness, and Accountability " to critically

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[2] Government Code section 12519 states:
"*The Attorney General shall give the Attorney General's opinion in writing to any Member of the Legislature, the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, State Lands Commission, Superintendent of Public Instruction, Insurance Commissioner, any state agency, and any county counsel, district attorney, or sheriff when requested, upon any question of law relating to their respective offices*.

"*The Attorney General shall give the Attorney General's opinion in writing to a city prosecuting attorney when requested, upon any question of law relating to criminal matters*."

Under this statute, the Attorney General may give opinions only to these specified public officials, and not to private individuals or to public officials who are not listed in the statute.
Source:https://oag.ca.gov/opinions/faqs#:~:text=Government%20Code%20section%2012519%20states%20that%20opinions%20shall%20be%20provided,cases%20arising%20in%20the%20city.

[3] The SAJE Policing Assessment is a tool designed to define and measure the characteristics of a sound, accountable, just, and effective policing agency. This much-needed resource helps police leaders and agencies, municipal leaders, and the communities they serve understand agency performance across 100 critical metrics.
Source: https://www.policingproject.org/saje-policing-assessment

examine the necessity, effectiveness, and oversight of specialized units within the Berkeley Police Department (BPD)

8. Adopt a resolution issuing a formal apology to the City of Berkeley community for the improper messaging displayed by this incident and reaffirm a commitment to support the work of the Fair and Impartial Committee, the PAB, the ODPA, the Peace and Justice Commission and other City Departments, community stakeholders working towards a more equitable and just City of Berkeley.

The ODPA additionally recommends that the **CITY MANAGER**:

1. Work with the City Auditor and IT to modify existing policies regarding city-issued devices and ensure compliance through randomized audits.
2. Work with the BPD to draft and adopt an Alcohol Rehabilitation Leave Procedure similar to Dallas Police Department General Order 446.00[4]

Lastly, the ODPA calls on the **COMMUNITY** to consider the following:

1. Seek Charter amendment to Section (15) Legal Counsel[5]: To provide independent counsel to the ODPA/PAB for all legal advice. Independent Counsel may be a staff employed by the ODPA or on retainer.
2. Seek Charter amendment to allow ODPA/PAB to conduct personnel misconduct investigations *sua sponte (*of one's own accord*).*

In instances where public trust has been impacted in such a manner, it is not only important to look at ways in which systems can be improved but also to be intentional about ways to heal the community and improve relationships down the line. This requires ongoing dialogue, community engagement, and concrete actions to rebuild trust and demonstrate a genuine commitment to change.

In closing, this report seeks to fulfill our commitment to the Berkeley community by providing a thorough examination of the incident and offering actionable recommendations. The goal is to foster a law enforcement environment that upholds the highest standards of integrity and

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[4] 446.01 Purpose
"*The purpose of the Alcohol Rehabilitation Leave Procedure is to provide employees of the police department with support and assistance in securing confidential care to help them overcome the detrimental use of alcohol before their career and personal lives are irreparably damaged. A concerning number of alcohol-related arrests and incidents involving members of the department have occurred and continue to occur. Employee safety and well-being is paramount for the Dallas Police Department. As a proactive measure, this procedure is being implemented immediately to support department employees. Our success as a Department is dependent on a physically and mentally healthy workforce who care for themselves just as much as the community they serve*."
Source: https://dallaspolice.net/resources/Shared%20Documents/General-Orders.pdf

[5] Berkeley Charter Section 125(15)(a):
*The Board and the Director of Police Accountability shall use the services of the City Attorney's Office for legal advice.*
Source: https://berkeley.municipal.codes/Charter/125(15)(a)

accountability, thereby restoring public trust and aligning policing practices with the values of the Berkeley community.

# Introduction

The ODPA presents this companion report subsequent to an exhaustive review conducted by the Subcommittee on Policy and Practices concerning the Downtown Task Force and Bike Unit Allegations of the PAB which was then formally discussed and approved by the full Board. Central to the concerns under scrutiny is the grave allegation of police quotas attributed to the Downtown Task Force, a matter that resonates deeply with both historical precedent and contemporary societal discourse.

The allegation of police quotas strikes at the core of the delicate balance between law enforcement's role in ensuring public safety and the imperative to safeguard individual rights and dignity. This issue's legislative history, though often obscured and scattered across many states, finds its origins rooted in Berkeley—a city renowned for its progressive and forward-thinking stance in shaping societal norms and legal frameworks (see Ossei-Owusu, 2021).

Remarkable legislative activity emerged in the 1970s, with Black Democratic Assemblyman John Miller at the helm, introducing California's bill in 1975. Miller, often described as a "progressive independent in local politics," demonstrated a keen political acumen, underpinning his support for quota bans with inclusive rhetoric (Id.). His district, which encompassed the diverse cities of Oakland and Berkeley, provided a unique perspective, one that resonated with concerns for both police officers and the general public.

Miller's stance articulated the inherent injustice in quotas, deeming them "unfair, undemocratic, and unjust." (see Ossei-Owusu, 2021 citing *Measure to Outlaw CHP's Ticket Quotas*[6], *supra* note 69, at 1.) He was troubled by the notion that an officer's failure to meet quotas could lead to demotion, while simultaneously expressing concerns for "the average California driver," who might find themselves disbelieved by a "rubber stamp traffic court system." (Id.)

California's statute, birthed from a convergence of multi-constituent concerns, remains relevant today, specifically in the City of Berkeley. It serves as a historical testament to the enduring pursuit of justice and fair play, core tenets that guide our efforts in maintaining police accountability, fostering public trust, and safeguarding the principles of democracy within the City of Berkeley.

This report endeavors to shed light on the contemporary implications of the allegations surrounding police quotas, while acknowledging their historical resonance within our community's consciousness. Through our investigations, we aim to contribute to the ongoing dialogue surrounding public safety, police conditions, and the eradication of police corruption, underscoring our commitment to a just and equitable Berkeley.

[6] Ossei-Owusu, S. (2021). Police quotas. NYUL Rev., 96, 529.

Additionally, this report investigates the alarming findings related to the DTF, particularly the use of arrest quotas, inappropriate behavior among officers, and the troubling internal culture that has surfaced through the examination of text messages exchanged within the unit. These findings underscore the need for immediate and decisive action to address the systemic issues within the BPD, particularly those related to the DTF's operations. This report presents a series of recommendations aimed at reforming the BPD to ensure transparency, accountability, and a renewed commitment to fair and just policing. These recommendations include proposed amendments to local legislation, the adoption of new internal policies, and the implementation of rigorous oversight mechanisms. By confronting these issues head-on and implementing the suggested reforms, Berkeley can restore public trust in its police department and reaffirm its dedication to upholding the highest standards of law enforcement.

# Recommendations for Council

*Call on the State Legislature to Amend Government Code section 12519*

Civilian oversight agencies play a crucial role in maintaining transparency and accountability within law enforcement. However, their effectiveness is often limited by the scope of their authority and access to necessary resources. The current Government Code section 12519 restricts the ability to request investigative assistance from the Attorney General's office to a limited group of officials, thereby excluding civilian oversight leaders who are often at the forefront of addressing public concerns regarding police misconduct. Amending this section to include heads of civilian oversight agencies as authorized requestors would not only empower these agencies but also ensure that they can perform their duties without unnecessary hindrances, especially in cases where their investigations encounter substantial resistance or require specialized expertise.

The recent findings in the PAB report highlight the numerous obstacles civilian oversight bodies face when attempting to access critical information, such as the Swanson report and other internal records. These challenges underscore the need for civilian oversight agencies to have the legal backing necessary to overcome such barriers, particularly when investigating serious allegations of misconduct. By allowing civilian oversight leaders to request assistance from the Attorney General's office, the Legislature would be affirming the importance of transparency and accountability in law enforcement, while also providing these agencies with the tools needed to conduct thorough and effective investigations.

Moreover, this amendment would signal the Legislature's commitment to strengthening civilian oversight in California, a state that has been at the forefront of progressive policing reforms. By expanding the scope of section 12519, the Legislature would not only bolster the independence of civilian oversight agencies but also promote a more robust system of checks and balances within law enforcement. This change would be a significant step towards ensuring that all investigations into police misconduct, particularly those involving complex or sensitive issues, are conducted with the highest standards of integrity and thoroughness.

*Procure the services of a vendor that can conduct real-time audits and analysis of BWC footage.*

The integration of body-worn cameras (BWC) into police operations was initially heralded as a key tool for enhancing transparency and accountability. However, the effectiveness of BWC footage in holding officers accountable depends heavily on the ability to analyze and audit this data in a timely and systematic manner. As highlighted in the PAB report, the current oversight mechanisms are insufficient, often leaving critical data unanalyzed due to limited resources and access issues. By procuring the services of a vendor that specializes in real-time audits and analysis of BWC footage, the City can ensure that this valuable resource is fully utilized to monitor police conduct, identify potential issues early, and provide an objective record of interactions between officers and the public.

Real-time analysis of BWC footage would also serve as a proactive measure to deter misconduct and reinforce a culture of accountability within the Berkeley Police Department. By enabling continuous monitoring, the City can swiftly address any deviations from policy, reducing the likelihood of incidents escalating into more severe issues. This approach aligns with the PAB's recommendations for more robust oversight and reflects the City's commitment to upholding the highest standards of policing. Moreover, the use of advanced technology to audit BWC footage can provide comprehensive insights into patterns of behavior, helping to inform future policy decisions and training programs.

Furthermore, the involvement of the Office of Strategic Planning and Accountability (OSPA) in this process ensures that the procurement of these services aligns with the broader strategic goals of the City and the Police Department. The OSPA can provide valuable input on the selection of the vendor, ensuring that the chosen solution is tailored to the specific needs of Berkeley's oversight framework. By integrating real-time BWC footage analysis into the City's accountability systems, Berkeley can set a new standard for transparency and public trust, demonstrating a commitment to continuous improvement in police oversight.

*Establish a protocol, subject to Council approval, with clear guidelines for how the City Manager should handle complaints against the Chief of Police*

The authority and responsibility of the Chief of Police place them at the center of law enforcement operations, making it essential that any complaints against them are handled with the utmost transparency and impartiality. The recent PAB report revealed significant challenges in accessing information necessary for oversight, particularly in cases involving high-ranking officials. To address these concerns, it is recommended that the City Manager, in collaboration with the City Attorney's Office, develop a clear and robust protocol for handling complaints

against the Chief of Police. This protocol should be subject to Council approval to ensure it reflects the community's expectations for transparency and accountability.

Central to this protocol should be the designation of the PAB and the ODPA as the primary investigative bodies for such complaints. This approach is consistent with the precedent established by the PRC Ordinance, which mandates that complaints filed with other city offices, boards, or departments be referred to the appropriate oversight commission for investigation. By formalizing this process, the City can ensure that complaints against the Chief of Police are not only investigated thoroughly but also in a manner that is independent of the Police Department's internal mechanisms, thereby avoiding any potential conflicts of interest.

Additionally, the establishment of clear guidelines for handling these complaints would provide all stakeholders, including the public, with confidence in the process. It would outline the specific steps to be taken from the receipt of a complaint through to its resolution, including timelines, investigative procedures, and reporting requirements. This transparency is crucial for maintaining public trust, particularly in situations where the actions of the Chief of Police are called into question. By implementing a well-defined protocol, the City of Berkeley can demonstrate its commitment to holding all members of its law enforcement agencies accountable, regardless of rank, and ensure that the principles of justice and fairness are upheld in all circumstances.

*Establish a communications policy, corresponding training, and compliance mechanisms to ensure impartiality and neutrality during the pendency of an active personnel investigation*

*Figure 1 City Manager Email to City Council acknowledging allegations*

**Former Berkeley Police Officer Email-Corey Shedoudy**

Williams-Ridley, Dee 3:40 PM
Arreguin, Jesse L., + 11

Mayor and Council,
I understand that you have all received a very disturbing email from former Berkeley Police Officer Corey Shedoudy. I want to assure you that the allegations will be investigated fully and any additional investigative oversight needed will be sought. The allegations and texts messages shared, should not be distributed. I will work with the City Attorney and Human Resources to determine immediate next steps in this matter.

Lastly, I do not see any reason to pause the upcoming item requesting the appointment of Jen Louis to Chief of Police. My initial inquiry affirms that she had no knowledge of the allegations or text messages provided by Former Officer Shedoudy.

If and/or when this email is made public by Shedoudy, you should expect to have inquiries from media outlets. At this time, it is best to refer all inquiries to Matthai Chakko, Public Information Officer, who will work with me and the City Attorney on messaging. Should you need to respond please use the following:

**"My office is aware of the seriousness of the matter and has been assured that the allegations will be investigated thoroughly. Since this is a confidential personnel matter, there are no other comments at this time".**

Please call if you have any questions,
Dee

On November 10, 2022 City Manager Williams-Ridley, by way of email, acknowledged to the Mayor and Council the allegations as brought forth by former BPD Officer Shedoudy (see Figure 1). In the email, the City Manager classified the email from the former officer as "disturbing". Furthermore, she assured the Mayor and Council that the "allegations will be investigated fully and any additional investigative oversight needed will be sought." This initial paragraph is without concern to the Board, but the subsequent paragraph reveals practices and policies (or lack thereof) regarding the operation of the Berkeley Police Department- as they relate to investigations of higher-ranking law enforcement officials- that are ripe for yielding prejudiced or biased conclusions.

Specifically, in the follow up paragraph, the City Manager states that she does "*not see any reason to pause the upcoming item requesting the appointment of Jen Louis to Chief of Police*." This statement is extremely concerning in the context of serious allegations that needed to be "fully investigated" and where the item dealt with the potential subject of an investigation to be undertaken. Additionally, the City Manager adds that her *"initial inquiry affirms that she [Chief Louis] had no knowledge of the allegations or text messages provided by Former Officer Shedoudy*." It is unclear to the Board what the depth and scope of the "initial inquiry" was, but if at that time the City Manager had not independently corroborated the lack of knowledge of the allegations by Chief Louis through independent witnesses that may had knowledge about this, through an administrative review of emails and text

messages of the Chief, it is difficult to understand how an "initial inquiry" could have *affirmed* that information. If at that time, the "initial inquiry" merely included a discussion with Chief Louis about the matter, that information, in and of itself, would have been insufficient by a preponderance of the evidence to "affirm" that the Chief had no knowledge about these allegations. At most, the Chief's denial about having knowledge could have "suggested" that the allegations lacked or possessed questionable merit.

Notwithstanding, considering that at this juncture of the events, the City Manager had not formally recused herself from investigating this matter[7] and the other Departments/units within the City with authority to investigate the matter *sua sponte*[8] were the BPD and IAB respectively, statements made by her (or her office) could had the effect of prejudicing the investigation. From an investigative and adjudicatory perspective, this presents various obvious problems that must be addressed through the enactment of policies or the guidance of practices.

There are many sources for policy and or practice guidance on navigating the delicate nature of investigations, but two important ones that can guide our City are:

- State Bar of California- RULES OF PROFESSIONAL CONDUCT[9] ; and
- U.S Department of Justice, Office of Community Oriented Policing Services (COPS)- STANDARDS AND GUIDELINES FOR INTERNAL AFFAIRS: Recommendations from a Community of Practice[10]

In Rule 3.6 Trial Publicity, the State Bar of California prohibits lawyers who are participating or have participated in the investigation or litigation of a matter from making, "*extrajudicial statement that the lawyer knows* or reasonably should know* will (i) be disseminated by means*

[7] Section 28(f) of the City Charter indicates that one of the powers and duties of City Manager is: "To make investigations into the affairs of the City, or any department or division thereof, or any contract, or the proper performance of any obligation running to the City."

In practice, the City Manager does not personally investigate affairs of the City, but rather delegates them to the appropriate personnel. In this instance, a matter concerning the Berkeley Police Department (in accordance with the BMC 2.64.030) would also be under the control and supervisory authority of the Chief of Police: "*The Chief of Police shall be responsible for the supervision and control of all divisions of the department and for the performance of the functions herein assigned to the department*."

[8] Section 125(3)(a)(3) of the City Charter specifies that the Board has authority to receive and consider findings of the Director of Police Accountability, where a complaint is filed by members of the public: "*To receive and consider the findings and recommendations of the Director of Police Accountability regarding complaints filed by members of the public against sworn employees of the Police Department and to recommend if discipline is warranted when misconduct is found and, pursuant to Section 18, the level of discipline for sustained findings of misconduct"*;

[9] State Bar of California- RULES OF PROFESSIONAL CONDUCT
https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_3.6-Exec_Summary-Redline.pdf

[10] U.S Department of Justice, Office of Community Oriented Policing Services (COPS)- STANDARDS AND GUIDELINES FOR INTERNAL AFFAIRS: Recommendations from a Community of Practice
https://portal.cops.usdoj.gov/resourcecenter/ric/Publications/cops-p164-pub.pdf

*of public communication and (ii) have a substantial* likelihood of materially prejudicing an adjudicative proceeding in the matter*." Serving in her capacity as the City Manager, it can be reasonably concluded that the City Manager knew or reasonably should have known (i.e. Brown Act) that her extrajudicial statements could be 1) disseminated by means of public communication and 2) have a substantial likelihood of materially prejudicing an adjudicative proceeding[11] in the matter.

Furthermore, the Rule provides guidance on what statements can be made depending on whether they focus on non-criminal or criminal cases. Specifically, in cases that are non-criminal in nature, according to Rule 3.6 (b), a lawyer may state:

> (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons* involved;
>
> (2) information contained in a public record;
>
> (3) that an investigation of a matter is in progress;
>
> (4) the scheduling or result of any step in litigation;
>
> (5) a request for assistance in obtaining evidence and information necessary
>
> thereto;
>
> (6) a warning of danger concerning the behavior of a person* involved, when there is reason to believe* that there exists the likelihood of substantial* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably* necessary to protect the individual or the public;

Given the guidance provided by the State Bar of California's Rules of Professional Conduct, it is evident that the City Manager's public statements regarding the allegations against the Berkeley Police Department's leadership, and specifically Chief Louis, should have been more cautiously framed to avoid any potential for prejudicing ongoing investigations. The premature affirmation of the Chief's lack of knowledge, without a thorough and independent inquiry, not only risks undermining the integrity of the investigation but also erodes public trust in the fairness of the process. It is crucial for city officials, particularly those in positions of authority, to refrain from making statements that could be perceived as influencing or pre-judging the outcome of such investigations.

To address the concerns raised by this incident, it is recommended that Berkeley adopt clear policies and procedures that align with the best practices outlined in the DOJ's "Standards and Guidelines for Internal Affairs" and the State Bar's Rules of Professional Conduct. These policies should emphasize the importance of impartiality and caution in public communications,

[11] Currently, the BPD's adjudicative proceeding consists of a hearing process which includes members of the City Manager's Office.

particularly when an investigation is ongoing. Moreover, the City should consider implementing training for city officials on these standards to ensure that future communications do not inadvertently compromise the integrity of investigations. By doing so, Berkeley can strengthen its commitment to transparency, accountability, and the rule of law, ensuring that all investigations are conducted with the highest standards of fairness and integrity.

### *Expand the Berkeley Police Transparency Hub by including data on the prosecutorial outcomes of each arrest made by the BPD*

Expanding the Berkeley Police Transparency Hub[12] to include data on the prosecutorial outcomes of each arrest made by the BPD represents a significant step toward enhancing transparency and accountability within the city's law enforcement operations. The report titled " Purging the Poor: Arrest Quotas, Racist Texts and the Role of City Leadership in the "Textgate" Scandal" by Berkeley Copwatch[13] underscores the importance of examining the entire spectrum of police interactions, from initial stops to final prosecutorial outcomes. Subsequently, Mr. Charles Clarke submitted his independent analysis on the prosecutorial outcomes related to this unit for the PAB's and ODPA's consideration (see attachments 1 and 2). Currently, the Transparency Hub provides valuable data on police stops, arrests, and other metrics, but it lacks critical information on how these arrests are processed and adjudicated within the criminal justice system. By including prosecutorial outcomes—such as charges filed, cases dismissed, plea bargains, and trial results—the City can offer a more complete picture of the effectiveness and fairness of BPD practices, allowing the community and oversight bodies to better understand the full impact of police actions, as well as any potential disparities in how justice is administered.

This expanded dataset would also provide crucial insights into potential disparities in the criminal justice process. For instance, if data reveals that certain demographic groups are disproportionately facing harsher prosecutorial outcomes, it could signal the need for further investigation and reforms within both the police department and the prosecutorial system. Moreover, such transparency would enable the PAB and other oversight entities to identify patterns of concern, such as frequent dismissals of cases due to insufficient evidence, which might indicate systemic issues in how arrests are conducted or how evidence is gathered. Ultimately, this initiative would empower the City of Berkeley to address these issues proactively, fostering greater trust between the police department and the community it serves.

Furthermore, the inclusion of prosecutorial outcomes in the Transparency Hub would reinforce Berkeley's commitment to data-driven decision-making and continuous improvement in public safety practices. By making this information publicly available, the City would not only increase accountability but also encourage a broader dialogue among stakeholders—including law enforcement, community leaders, and policymakers—about the intersections between policing and the judicial system. This holistic approach to transparency would set a precedent for other

[12] https://bpd-transparency-initiative-berkeleypd.hub.arcgis.com/
[13] https://www.berkeleycopwatch.org/_files/ugd/9faa72_175f75bda71646b983857d0a0e352434.pdf?index=true

jurisdictions, demonstrating Berkeley's leadership in advancing equitable and just law enforcement practices.

*Research the viability and fitness for law enforcement accreditation for BPD and the viability of utilizing a law enforcement agency assessment tool like NYU's Policing Project SAJE tool*[14]

The pursuit of law enforcement accreditation and the adoption of advanced assessment tools are crucial strategies for ensuring that the BPD meets the highest standards of professional conduct and operational effectiveness. By directing the City Manager and Chief of Police, in consultation with the OSPA, to explore the viability and fitness of these initiatives, Berkeley can systematically evaluate its policing practices against national and international benchmarks. Accreditation from recognized bodies like CALEA (Commission on Accreditation for Law Enforcement Agencies) would not only affirm the BPD's commitment to excellence but also provide a structured framework for continuous improvement, covering critical areas such as policy development, training, and accountability mechanisms.

In addition to exploring accreditation, researching the potential adoption of a law enforcement assessment tool like NYU's Policing Project SAJE (Sound, Accountable Just, and Effective) would allow Berkeley to engage in a more nuanced evaluation of its policing practices. The SAJE tool is specifically designed to assess law enforcement agencies on key metrics related to justice, equity, and public safety outcomes. By implementing such an assessment, the BPD can gain deeper insights into areas that require reform or enhancement, particularly in the context of community trust and fairness in policing. This would also enable the PAB and ODPA to play a more informed role in oversight, ensuring that the department's practices align with the community's expectations and the City's commitment to equitable law enforcement.

These initiatives—pursuing accreditation and employing advanced assessment tools—would significantly strengthen Berkeley's oversight capabilities and enhance the BPD's transparency and accountability. By rigorously evaluating the department's operations through these lenses, Berkeley can identify best practices and areas for improvement, ensuring that its police force not only meets but exceeds the standards of modern, community-oriented policing. This forward-looking approach would reinforce Berkeley's role as a leader in innovative police reform and set a high bar for law enforcement agencies nationwide.

[14] For preliminary research on these tools consider ODPA's memo presented to the PAB on March 13, 2024: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2024-03-13%20PAB%20Agenda%20Packet.pdf

*Utilize the guidelines in the DOJ report " Considerations for Specialized Units: A Guide for State and Local Law Enforcement Agencies to Ensure Appropriateness, Effectiveness, and Accountability" to critically examine the necessity, effectiveness, and oversight of specialized units within the BPD*

The findings from the PAB report on the BPD Downtown Task Force and Bike Unit raise serious concerns about the operations and oversight of these specialized units, including potential misuse of power and negative community impact. To address these issues and ensure that specialized units within the BPD are functioning effectively and justly, it is recommended that the City Manager and Chief of Police, with input from the OSPA, adopt the guidelines provided in the DOJ's "Considerations for Specialized Units: A Guide for State and Local Law Enforcement Agencies to Ensure Appropriateness, Effectiveness, and Accountability."[15]

This guide offers a comprehensive framework for law enforcement agencies to assess the appropriateness, effectiveness, and accountability of their specialized units. By applying these guidelines, the BPD can conduct a thorough evaluation of its specialized units to determine whether they are necessary, whether their operations are aligned with the department's mission and values, and whether they have appropriate oversight mechanisms in place to prevent misconduct and ensure transparency.

The evaluation should include a review of the units' goals, operational practices, and community impact, with a particular focus on identifying any areas where reforms may be needed to align with best practices for accountability and fairness. Implementing the recommendations from the DOJ guide will help ensure that all specialized units within the BPD operate in a manner that promotes public trust and community safety, reinforcing Berkeley's commitment to equitable and just policing.

*Adopt a resolution issuing a formal apology to the City of Berkeley community for the improper messaging displayed by this incident and reaffirm a commitment to support the work of the Fair and Impartial Policing Committee*

The recent revelations of improper messaging within the Berkeley Police Department, as detailed in the PAB report, have understandably caused significant concern within the community, undermining trust in local law enforcement. To address this breach of public confidence, it is essential that the City Council adopt a resolution issuing a formal apology to the City of Berkeley community. This apology should acknowledge the harm caused by the insensitive and inappropriate communications, recognizing their impact on the community's perception of the

[15] National Policing Institute. 2024. Considerations for Specialized Units: A Guide for State and Local Law Enforcement Agencies to Ensure Appropriateness, Effectiveness, and Accountability. Washington, DC: Office of Community Oriented Policing Services.
Source: https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-r1140-pub.pdf

police and reaffirming the City's commitment to maintaining the highest standards of professionalism and respect within its police force.

In addition to the apology, the resolution should also explicitly reaffirm the City's ongoing commitment to supporting the work of key oversight and community-oriented bodies, including the Fair and Impartial Policing Committee, the PAB, the Office of the Director of Police ODPA, the Peace and Justice Commission, and other relevant City departments and stakeholders. These entities play a vital role in promoting equity, justice, and accountability in Berkeley, and their work is more important than ever in the wake of this incident. By publicly committing to support these bodies, the City Council can help ensure that they have the resources and authority needed to carry out their mandates effectively, fostering a culture of transparency and continuous improvement.

Moreover, this resolution would serve as a critical step in healing the relationship between the BPD and the community it serves. By taking responsibility for the actions of its police force and demonstrating a sincere commitment to addressing the underlying issues, the City of Berkeley can begin to rebuild trust and move forward with a renewed focus on equity and justice. This formal apology, coupled with a reaffirmed commitment to oversight and reform, would underscore the City's dedication to creating a police department that truly reflects the values and expectations of its diverse and vibrant community.

# Recommendations for the City Manager

*Work with the City Auditor and IT to modify existing policies regarding city-issued devices and ensure compliance through randomized audits*

The effective management and oversight of city-issued devices are critical to maintaining the integrity and security of Berkeley's operations. Current policies governing the use of these devices must be updated to reflect evolving technology, security risks, and the need for accountability in their use. Collaborating with the City Auditor and IT department will allow Berkeley to establish more stringent guidelines for the use of city-issued devices, ensuring that they are utilized appropriately and securely for official purposes. By refining these policies, the City can mitigate risks associated with data breaches, unauthorized use, and potential misconduct related to the use of these devices.

To ensure compliance with the updated policies, the City should implement a system of randomized audits. These audits will serve as a critical oversight mechanism, verifying that city-issued devices are being used in accordance with the established guidelines. Randomized audits provide a deterrent effect, reducing the likelihood of misuse by ensuring that all city employees are aware that their device usage may be subject to review at any time. This proactive approach will help to identify any instances of non-compliance or security vulnerabilities early, allowing the City to address issues before they escalate.

Moreover, this initiative will enhance transparency and accountability across all departments, demonstrating Berkeley's commitment to responsible governance and the

safeguarding of public resources. Regular audits and policy reviews will not only protect the City's technological assets but also foster a culture of accountability and ethical conduct among employees. By prioritizing the proper management of city-issued devices, Berkeley can ensure that its operations remain secure, efficient, and aligned with best practices in public administration.

### *Work with the BPD to draft and adopt an Alcohol Rehabilitation Leave Procedure similar to DPD GO 446.00*

Recognizing the importance of supporting the well-being and health of police officers, and in light of the troubling references to alcohol in the text messages exchanged among members of the Downtown Task Force, it is recommended that Berkeley work with the BPD to draft and adopt an Alcohol Rehabilitation Leave Procedure, modeled after DPD GO 446.00[16]. The text messages revealed that alcohol was frequently mentioned as a prize or reward for making arrests, raising serious concerns about the role of alcohol within the department's culture. This procedure would provide a structured and compassionate approach for officers who are struggling with alcohol dependency, offering them the opportunity to seek treatment without fear of stigma or career repercussions. By adopting such a policy, Berkeley would demonstrate its commitment to the holistic health of its law enforcement personnel, acknowledging that the mental and physical well-being of officers is integral to their ability to serve the community effectively.

The Alcohol Rehabilitation Leave Procedure would outline clear guidelines for officers to request leave for alcohol rehabilitation, ensuring confidentiality and support throughout the process. This policy would include provisions for treatment programs, reintegration plans, and monitoring to ensure that officers receive the help they need while maintaining the integrity of the department's operations. By providing a pathway to recovery, the City can help officers address substance use issues proactively, reducing the risk of related misconduct, such as the troubling behaviors highlighted in the PAB report, and enhancing overall department morale.

Furthermore, implementing this procedure would align Berkeley with best practices in law enforcement, emphasizing the importance of health and wellness initiatives within the police force. By adopting a proactive stance on alcohol rehabilitation, particularly in response to the issues revealed in the text messages, the City can foster a supportive environment where officers feel empowered to seek help when needed, ultimately leading to a more resilient and effective police department. This initiative would also reflect the City's broader commitment to public health, extending support to those who serve and protect the community while addressing the underlying cultural issues that may contribute to unhealthy behaviors within the force.

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# Recommendations for the Community

*Seek Charter amendment to Section (15) Legal Counsel: To provide independent counsel to the ODPA/PAB for all legal advice*

To enhance the independence and effectiveness of the ODPA and the PAB, it is recommended that Berkeley seek a Charter amendment to Section 15, which governs Legal Counsel. This amendment would provide for the appointment of independent legal counsel dedicated solely to the ODPA and PAB, ensuring that all legal advice and representation is free from potential conflicts of interest. By establishing independent counsel, either as a staff position within the ODPA or through a retainer arrangement, the City can ensure that the ODPA and PAB receive unbiased, expert legal guidance tailored to their unique oversight functions.

Independent counsel would play a critical role in advising the ODPA and PAB on a wide range of legal issues, including investigations, policy reviews, and disciplinary recommendations. This arrangement would allow the ODPA and PAB to operate with greater autonomy, as they would no longer need to rely on legal advice from the City Attorney's office, which also represents the police department and other city entities. Ensuring that the ODPA and PAB have their own legal counsel would reinforce their ability to carry out their mandates effectively, without concerns about divided loyalties or conflicts of interest that might arise when the same legal office advises both oversight bodies and the police department.

Moreover, this amendment would signal Berkeley's commitment to robust civilian oversight of law enforcement, providing the ODPA and PAB with the tools they need to perform their duties independently and effectively. By securing independent legal counsel, Berkeley would enhance the credibility and authority of its police oversight institutions, fostering greater public trust in the integrity of the oversight process. This move would align Berkeley with best practices in police accountability, ensuring that the ODPA and PAB are equipped to fulfill their critical role in promoting transparency, accountability, and justice within the Berkeley Police Department.

*Seek Charter amendment to allow ODPA/PAB to conduct personnel misconduct investigations sua sponte (of one's own accord)*

To further strengthen the oversight capabilities of the ODPA and the PAB, it is recommended that Berkeley seek a Charter amendment allowing these bodies to initiate personnel misconduct investigations *sua sponte*, or of their own accord. Currently, the ODPA and PAB are often limited to responding to complaints filed by members of the public, which can restrict their ability to address misconduct proactively. By granting the authority to initiate investigations independently, the ODPA and PAB would be better equipped to address potential issues of police misconduct that may not come to light through public complaints alone.

This amendment would empower the ODPA and PAB to act on credible information or patterns of behavior that suggest misconduct, even in the absence of a formal complaint. Such

authority is crucial for addressing systemic issues within the police department that may otherwise go unchecked. By allowing these oversight bodies to investigate proactively, Berkeley can ensure that all instances of misconduct are thoroughly examined and addressed, reinforcing the city's commitment to maintaining high standards of conduct within its police force.

Moreover, this change would align Berkeley with national effective practices in police oversight, where independent civilian bodies are granted the authority to initiate investigations based on their observations or information received from other sources. By enabling the ODPA and PAB to conduct investigations *sua sponte*, Berkeley would enhance the effectiveness of its police oversight mechanisms, ensuring that the department remains accountable to the public it serves. This amendment would further solidify Berkeley's leadership in police reform and its commitment to transparency, accountability, and justice in law enforcement.

# Conclusion

The investigation into the BPD's Downtown Task Force and Bike Unit has revealed significant issues within the department, including the existence of arrest quotas, problematic messaging, and a culture that at times prioritizes performance metrics over ethical and just policing. The verified text messages that circulated among DTF members not only exhibited racial and socioeconomic biases but also suggested that alcohol was used as a reward for meeting arrest targets. These revelations underscore the urgent need for comprehensive reforms within the BPD to restore public trust and ensure that all policing practices align with the principles of fairness, equity, and transparency that Berkeley holds dear.

This companion report has provided a series of recommendations aimed at addressing the systemic issues uncovered during this investigation. These recommendations are designed to enhance the accountability of the BPD, strengthen oversight mechanisms, and support the well-being of officers to prevent future occurrences of misconduct. Key among these recommendations is the call for amendments to state legislation, the adoption of rigorous auditing and real-time monitoring of body-worn camera footage, and the establishment of clear protocols for handling complaints against high-ranking officials within the department.

The City of Berkeley has a longstanding commitment to progressive policing and community-oriented public safety. To honor this commitment, it is essential that the City Council, City Manager, and all relevant stakeholders take decisive action in implementing the recommendations outlined in this report. By doing so, Berkeley can lead by example, demonstrating that accountability and integrity are non-negotiable values in law enforcement. Moving forward, continuous dialogue, community engagement, and transparent governance will be critical in healing the divisions caused by these recent events and in building a more just and equitable future for all residents of Berkeley.

# ATTACHMENT 1.

# Arrest Quotas Memorandum from Charles Clarke, August 18, 2023 To the City of Berkeley Police Accountability Board and Director of Police Accountability

# Arrest Quotas

## Memorandum from Charles Clarke, August 18, 2023 To the City of Berkeley Police Accountability Board and Director of Police Accountability

On November 10, 2022, ex-Berkeley Police Department (BPD) Officer Corey Shedoudy e-mailed to the Berkeley City Council a collection of text messages that, among other things in Shedoudy's words, "clearly outline a practice of illegal arrest quotas".[1] Arrest quotas have been prohibited by the California Vehicle Code since 1976:[2]

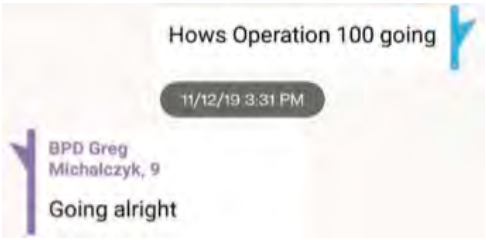
> "No..local agency employing peace officers…may establish any policy requiring any peace officer…to meet an arrest quota."

This memorandum addresses the arrest quota element of Shedoudy's allegations.

## The "Operation 100" Bike Unit Text Messages Suggest an Arrest Quota

The Shedoudy text messages[3] provided to the City Council have been (with one exception, not relevant here) authenticated by a vendor retained by the outside investigator Swanson & McNamara.[4]

On November 12, 2019, an unnamed officer (most likely then-Ofcr. Shedoudy) asked Ofcr. Greg Michalczyk about "Operation 100".[5]




[1] Police Accountability Board Special Meeting Agenda Packet, July 24, 2023, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2023-07-24%20PAB%20Spe.Mtg_.Pkt_.pdf, "November 10, 2022, Email from Corey Shedoudy to the Mayor and Berkeley City Council," p. 36

[2] California Vehicle Code § 41602 *Arrest Quotas*, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=17.&chapter=7.&lawCode=VEH, attached as Exhibit 1.

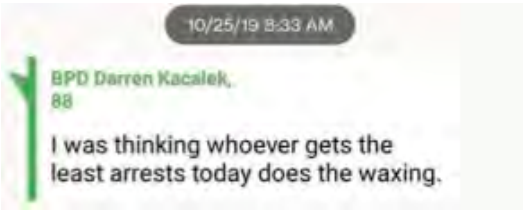
[3] PAB Packet, supra n. 1, "Text Messages Attached to Shedoudy's November 10, 2022 Email to the Mayor and City Council," pp. 38 et seq.

[4] PAB Packet, supra n. 1, "Summary of Investigation Process," p. 25

[5] PAB Packet, supra n. 1, p. 49

Later that day the meaning of "100" as a count of arrests was illustrated in an exchange between Ofcr. Michalczyk and Sergeant Darren Kacalek, the Bike Unit supervisor.[6]

The preceding month Sgt. Kacalek had suggested penalizing the officer with the fewest arrests to the drudgery of waxing (bikes, presumably).[7]




Also that same month Sgt. Kacalek had emphasized arrests to his unit (then known as the DTF, Downtown Task Force).[8]

(Overtime then as now had become a perennial challenge to the Berkeley Police Department,[9] so relaxing that constraint in explicit exchange for arrests ran the implicit risk of establishing a quota.)

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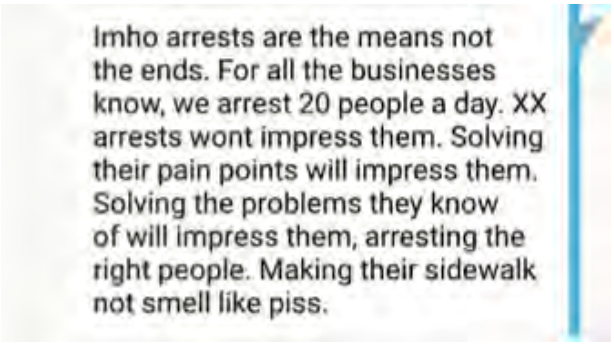
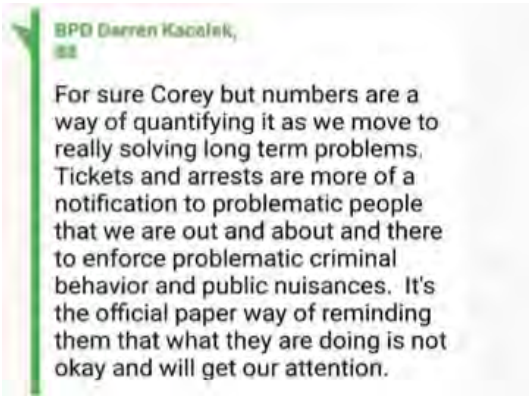
[6] PAB Packet, supra n. 1, p. 43
[7] PAB Packet, supra n. 1, p. 45
[8] PAB Packet, supra n. 1, p. 48, apparent approximate date October 19, 2019
[9] Berkeley City Auditor, *Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities*, March 3, 2022, https://berkeleyca.gov/sites/default/files/2022-04/Berkeley%20Police%20-%20Improvements%20Needed%20to%20Manage%20Overtime%20and%20Security%20Work%20for%20Outside%20Entities.pdf

However, beleaguered local businesses might not connect arrest counts to their own sense of security – an issue raised by an unnamed officer (likely ex-Ofcr. Shedoudy) in an undated message.[10]




Sgt. Kacalek responded that "numbers are a way of quantifying it…a notification to problematic people that we are out and about."[11]




From this evidence I conclude that the Bike Unit, in the person of its supervisor Sgt. Kacalek, paid attention to the count of arrests made in late 2019. At least with Ofcr. Michalczyk there was an explicit numerical target. Whether this attention constituted a *quota* – for Ofcr. Michalczyk or the entire Bike Unit – with the attendant suggestion that at least some arrests were made *unlawfully*, is suggested but not proven by the sample of text messages so far produced. A deeper look is needed.

[10] PAB Packet, supra n. 1, p. 40
[11] PAB Packet, supra n. 1, p. 41

## The Downtown Task Force/Bike Unit Has Met A City Policing Priority

Swanson & McNamara identified the Downtown Task Force's start date as October 22, 2019.[12] However, as early as 2018 BPD had "[s]taffed overtime patrols in the downtown,"[13] partially in response to a campaign position from Councilmember Kate Harrison reflecting concerns of her Downtown constituents:[14]

> "More community policing – with foot and bicycle police – would improve community relations, particularly in the Downtown. Officers would get to know the merchants, residents and high school students and diffuse *[sic]* situations."

BPD would count among its 2019 strategies and accomplishments:[15]

> "Downtown Task Force…Began Bike Patrol training and equipment acquisition."

This priority was reflected in the FY 2020/2021 biennial budget adopted in mid-2019:[16]

> "The Bike Patrol will provide proactive patrols in the downtown and south campus, and support problem-solving efforts associated with those areas."

The onset of the COVID-19 pandemic in March 2020 led to increased concern about safety in Downtown and south of campus. In the words of three members of the City Council in June 2020:[17]

> "During this COVID-19 emergency, City staff have received numerous complaints from local businesses regarding problematic and violent behavior, including assault of employees and property damage. As a result of increased criminal activity, the Berkeley Police Department have deployed overtime shifts in Telegraph and the Downtown to increase police patrols to respond more quickly to calls for service and to increase police presence to deter crime. While

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[12] "Summary of Investigation Process," supra n. 4

[13] Berkeley Police Department, *2018 Annual Crime Report*, March 19, 2019, p. 3, https://records.cityofberkeley.info/PublicAccess/api/Document/Ae3FvWxdiUDVkDsWDvyxHMc492HuYFW0lJpÉpp601ZyyWihrOgcndqMWadQzZ9QpPkazKJgV5uZUIWmgvutEEac%3D/

[14] Kate Harrison, *Berkeley Progressive Alliance Candidate Questionnaire*, p. 3, https://www.berkeleytenants.org/wp-content/uploads/2017/01/Questionnaire.-Harrison.pdf

[15] Berkeley Police Department, *2019 Crime Report and Five Year Use of Force Report*, October 13, 2020, p. 3,4, https://records.cityofberkeley.info/PublicAccess/api/Document/AfPSh1Yn6aÁYFbhJYqtRQgUtÉmAT74LfpBLjvP9AwFsflVemWdd89cg9B4lFNHSMaxk8ÁpAlICAr2wmQEKnnbbQ%3D/

[16] City Manager, *FY 2020 & FY 2021 Biennial Budget Adoption*, June 25, 2019, p. 295 of 570, https://records.cityofberkeley.info/PublicAccess/api/Document/AcuCVnDbGawvbuIJ5bA6dÁkBWuDhZpxNnJyKMWTP7MeÉgslmZNIPG3s0vBJM4McaNB8jGcD2WeKCmVPNhEOAjU0%3D/

[17] Mayor Arreguín, Councilmembers Harrison and Robinson, *Establishing a COVID-19 Business Damage Mitigation Fund*, June 2, 2020, p. 1, https://records.cityofberkeley.info/PublicAccess/api/Document/Aa4fp020coTCJkfwrmÉ7ffbVgxl0b0QMhpQ7jxf9dboKOZUwMkWucvfvNNoVODsyCv1JG6i1chEaCdjZu48evu4%3D/

> the deployment of the Downtown Task Force has provided additional presence and support for businesses, crime is still occurring."

By September 2020 the Bike Unit had been fully re-launched with a complement of six officers supervised by Sgt. Kacalek.[18] Since the re-launch Berkeley Copwatch has added Ofcr. George Schikore, the Area 4 (West Berkeley) Coordinator,[19] as a target for scrutiny in the Operation 100 text messages matter.[20] This deeper look will focus on these eight officers, pictured in Figure 1.

**Figure 1. Downtown Task Force/Bike Unit Officers**

(upper, from left) Darren Kacalek (Badge #88 and S-18), Greg Michalczyk (#9), James Seaton (#66), Tom Stern (#8); (lower, from left) Marissa Pickett (#81), Corey Shedoudy (#127), Dan Breaux (#15), George Schikore (#13). Photos: Berkeley Copwatch

[18] Berkeley Police Department, *Berkeley PD re-launches our Bike Detail*, September 22, 2020, https://berkeleyca.gov/community-recreation/news/berkeley-pd-re-launches-our-bike-detail
[19] Berkeley Police Department, *Community Liaisons*, https://berkeleyca.gov/safety-health/police/community-liaisons (accessed August 8, 2023)
[20] Berkeley Copwatch, *BPD Textgate Scandal, View The Officers Here*, https://www.berkeleycopwatch.org/textgate (accessed August 8, 2023)

## What Do The Data Say?

The Berkeley Police Department has released Department-wide officer-level arrest activity in response to a public records request.[21] The dataset includes:

*Arrest Identifiers*: Date and Time; Arrest Number; Case Number; Statute(s) Violated
*Arrest Type*, one of: Court Filed (Warrant), Field Cite, On-view by Citizen, On-view by Officer, Suspicion of Felony, Other Arrest
*Arrestee Demographics*: Race (Asian, Black, Hispanic, White, Other); Sex (Male, Female)
*Arresting Officer ID* (last name, first name initial when needed to disambiguate)

A total of 10,330 arrests spanning 60 months (calendar years 2018 to 2022, inclusive) have been reported. These arrests collectively accounted for a total of 22,829 reported statutory violations (on average a bit more than 2 violations per arrest, ranging from 1 to a maximum of 16).

**Table 1. Arrests Per Officer, 2018-2022 Total and Monthly Average, Bike Unit vs. BPD**

| | Kacalek | Breaux | Michalczyk | Pickett | Schikore | Seaton | Shedoudy | Stern | DTF/ Bike Unit | Rest of BPD |
|---|---|---|---|---|---|---|---|---|---|---|
| Arrests | 52 | 121 | 536 | 114 | 117 | 198 | 84 | 168 | 1,390 | 8,940 |
| Months* | 28 | 43 | 60 | 51 | 39 | 51 | 24 | 40 | 60 | 60 |
| Monthly Average | 1.9 | 2.8 | 8.9 | 2.2 | 3.0 | 3.9 | 3.5 | 4.2 | 3.8 | 2.5 |

* Months in which at least one arrest is reported

Table 1 summarizes the counts of arrests for the 8 Bike Unit officers, individually and as a group, and for the remaining non-Bike Unit officers of the Berkeley Police Department. In a typical month in the sample period about 60 non-Bike Unit BPD officers would make at least one arrest. The monthly average denotes the average over months in which that officer reported at least one arrest.

The most remarkable feature in Table 1 is the average arrest activity of Officer Michalczyk (8.9 arrests per month), more than double the monthly Bike Unit average (3.8), which is itself about 50% higher than the BPD non-Bike Unit average (2.5).

Distinguishing an officer's voluntary vigor from his laboring under a quota is a difficult task with the data in hand. Table 2 shows the five BPD officers making the most arrests in the sample period. Ofcr. Michalczyk made significantly more arrests

[21] City of Berkeley, Public Record Request 23-138, https://cityofberkeleyca.nextrequest.com/requests/23-138

than any other BPD officer. Only one other Bike Unit member, Ofcr. Seaton, was in the top 5.

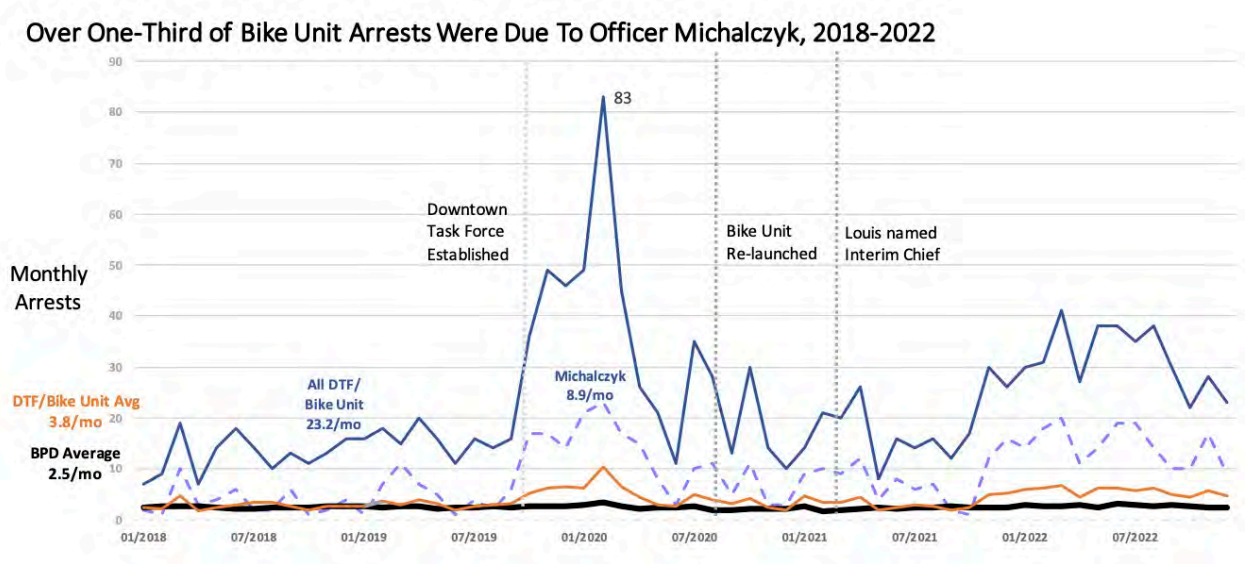
**Table 2. Top 5 BPD Officers, by Arrests, 2018-2022**

| Officer | Arrests | Months* | Monthly Average |
|---|---|---|---|
| Greg Michalczyk ** | 536 | 60 | 8.9 |
| Jason Muniz | 228 | 50 | 4.6 |
| Wesley Grover | 202 | 54 | 3.7 |
| James Seaton ** | 198 | 51 | 3.9 |
| Graham Shivas | 190 | 26 | 7.3 |

* Months in which at least one arrest is reported ** DTF/Bike Unit

Figure 2 displays the time patterns of Bike Unit and non-Bike Unit arrest activities. The Bike Unit (the solid blue line) attained its monthly maximum of 83 arrests in February 2020, when Ofcr. Michalczyk (the dotted blue line) also reached his monthly arrest maximum (23). Over the 3+ years of the Downtown Task Force/Bike Unit in the dataset, Ofcr. Michalczyk accounted for over one-third of the unit's arrests. The peak in DTF/Bike Unit arrest activity shortly before and in the early days of the COVID-19 pandemic is evident.

**Figure 2. Time Pattern of Bike Unit Arrests vs. BPD's Arrest Average**




The DTF/Bike Unit average (the solid orange line) of about 3.8 arrests per officer per month (including Ofcr. Michalczyk) is about 50% higher than the non-Bike Unit BPD average (the solid black line), about 2.5 arrests per arresting officer per month.

Figure 2 indicates that the "Operation 100" moniker was not literally realized, but failure to attain a quota does not disprove its existence. It is worth noting at the very time the quota was allegedly in effect (2019) the Berkeley Police Association recognized Ofcr. Michalczyk as its Officer of the Year.[22] Two years later a supervising sergeant recognized his (and Ofcr. Stern's) vigor on the Bike Unit, attached as Exhibit 2.[23]

The Bike Unit (and its predecessor Downtown Task Force) was intended to increase police presence to deter crime. Because a bike officer could be said to be "closer" to the public than a car-borne officer, I would expect a Bike Unit officer to see more instances of crime directly and to respond more rapidly to citizen reports of crimes. This expectation is broadly fulfilled by the relative proportions of arrest types reported in Table 3 below.

In particular, 50% of DTF/Bike Unit arrests were made pursuant to direct observation by the officer (vs. 38% for the rest of BPD). The proportion of Bike Unit arrests due to citizen identifications was also somewhat greater (18% vs. 15%). The shares due to warrant service – aggregating warrants from BPD and outside jurisdictions, felonies and misdemeanors – were equal (15%) between the Bike Unit and the rest of the BPD.

In summary the DTF/Bike Unit arrest type mix shown in Table 3 broadly reflects a more up-close community policing approach than the rest of the BPD. The variation of arrest types across Bike Unit officers does not immediately suggest to me a Unit-wide quota based on the type of arrest.

[22] Berkeley Police Association, December 12, 2019, https://www.facebook.com/BerkeleyPoliceAssoc/posts/pfbid02kCFphZQkQLccoszcUMBtVQAxDsN5tmocjdKumwetFAycNN12zzK3KsZXcKs2Bftkl

[23] Berkeley Police Department Memorandum, *Commendation for Officers Michalczyk and Stern*, April 21, 2021, p. 72 in PAB Special Meeting Packet (part 1 of 3), April 27, 2022, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2022.04.27.PAB_.Pkt%281of3%29.pdf. Attached hereto as Exhibit 2.

**Table 3. Arrest Type Proportions, DTF/Bike Unit vs. BPD, 2018-2022**

| | Kacalek | Breaux | Michalczyk | Pickett | Schikore | Seaton | Shedoudy | Stern | DTF/ Bike Unit | Rest of BPD |
|---|---|---|---|---|---|---|---|---|---|---|
| On-View by Officer | 50% | 43% | 53% | 32% | 59% | 58% | 46% | 40% | 50% | 38% |
| On-View by Citizen | 13% | 14% | 21% | 14% | 6% | 21% | 24% | 17% | 18% | 15% |
| Warrant | 2% | 17% | 12% | 24% | 28% | 11% | 8% | 17% | 15% | 15% |
| Susp. Of Felony | 31% | 14% | 13% | 19% | 4% | 9% | 14% | 23% | 14% | 27% |
| Field Cite | 4% | 10% | 0% | 11% | 2% | 2% | 7% | 4% | 3% | 5% |
| Other Arrest | 0% | 2% | 0% | 0% | 1% | 0% | 0% | 0% | 0% | 1% |
| Total | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

## Did the Bike Unit Charge Different Violations From the Rest of BPD?

Ex-Ofcr. Shedoudy has alleged the DTF/Bike Unit under Sgt. Kacalek used "questionable legal tactics that included stop and frisk, probation searches with no reasonable suspicion of a crime, and a very loose interpretation of stay-away orders from UC Berkeley."[24] The available *arrest* data do not directly measure Bike Unit *search* behavior but they do indicate the frequency that officers (claimed to have) found probable cause that certain statutory violations could be charged to make an arrest.

The top ten statutory violations charged by the Bike Unit and by the rest of BPD over the sample period 2018-2022 are shown in Table 4. These statutory violations (*charges*) can be grouped into meaningful categories of the California Penal Code[25] as follows:

- *Warrants* for arrest issued by a court pursuant to a probable-cause statement by BPD or another law enforcement agency, for felony or misdemeanor offenses;[26]
- *Violation of a court order*, including *probation* for felony (f) or misdemeanor (m) offenses, or prohibition of some other activity (e.g. a stay-away order);[27]

[24] "November 10, 2022, Email from Corey Shedoudy," supra n. 1, p. 36
[25] California Penal Code, https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=PEN&tocTitle=+Penal+Code+-+PEN
[26] Cal. P.C. §§ 813-829, The Warrant of Arrest. Note that the Table 4 proportions for Warrant arrests are lower than in Table 3 because other offenses for a given arrest may have been reported in Table 4.
[27] Cal. P.C. §§ 1203.2 (felony & misdemeanor), 166(A)(4)

- *Substance abuse*, specifically possession of drug paraphernalia or methamphetamine, or public intoxication;[28]
- *Property crime*, specifically petty theft (value less than $950) or burglary;[29] and
- *Resisting arrest* incident to apprehension for some other offense.[30]

These listed charges in Table 4 constituted 63% of Bike Unit arrests but only 44% of arrests by the rest of BPD, consistent with more diffuse crime patterns across the wider city.

**Table 4. Arrest Charge Proportions, DTF/Bike Unit vs. BPD, 2018-2022**

| Charge | Kacalek | Breaux | Michalczyk | Pickett | Schikore | Seaton | Shedoudy | Stern | DTF / Bike Unit | Rest of BPD |
|---|---|---|---|---|---|---|---|---|---|---|
| Warrant* | 6% | 12% | 11% | 18% | 21% | 10% | 7% | 12% | 12% | 11% |
| Probation violation (m) | 10% | 7% | 15% | 8% | 11% | 15% | 16% | 11% | 13% | 5% |
| Probation violation (f) | 4% | 5% | 2% | 1% | 2% | 3% | 2% | 2% | 2% | 4% |
| Violation of court order | 5% | 0% | 4% | 1% | 5% | 3% | 3% | 1% | 3% | 1% |
| Poss. of drug paraphernalia | 7% | 9% | 14% | 11% | 9% | 9% | 11% | 14% | 12% | 5% |
| Poss. of meth-amphetamine | 3% | 4% | 8% | 5% | 7% | 6% | 5% | 7% | 7% | 4% |
| Public intoxication | 7% | 2% | 2% | 5% | 4% | 6% | 3% | 2% | 3% | 3% |
| Petty theft | 2% | 3% | 9% | 8% | 1% | 6% | 11% | 7% | 7% | 4% |
| Burglary | 1% | 0% | 1% | 0% | 1% | 1% | 1% | 1% | 1% | 4% |
| Resisting arrest | 4% | 2% | 3% | 4% | 2% | 4% | 4% | 5% | 3% | 3% |
| Subtotal | 48% | 44% | 69% | 61% | 63% | 64% | 63% | 62% | 63% | 44% |
| Other | 52% | 56% | 31% | 39% | 37% | 36% | 37% | 38% | 37% | 56% |
| Grand Total | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

* Warrant = BPD & Outside Agency, felony (f) & misdemeanor (m) Poss. = possession

**The Bike Unit executed warrants in approximately the same proportion of its arrests (12%) as the rest of BPD (11%)**, and arrested approximately the same proportion due to property crime (both totaling about 8%) and for resisting arrest (both 3%).

[28] Cal. P.C. §§ 11364(A), 11377(A), 647(F)
[29] Cal. P.C. §§ 484(A), 459
[30] Cal. P.C. § 148(A)(1)

**Bike Unit arrests for violation of court orders were about twice as frequent relative to the rest of BPD**, especially for misdemeanor probation violation (13% vs. 5%) and other court orders (3%, about triple BPD's 1%).

This relatively greater frequency bears upon the "questionable legal tactics" that ex-Ofcr. Shedoudy has alleged. It is noteworthy that, among Bike Unit members, the ex-officer made proportionately the most arrests for misdemeanor probation violation (16% of his total) and approximately the Bike Unit average (3%) for violation of court orders (e.g. stay-aways).

**Bike Unit arrests for substance abuse were about twice as frequent relative to the rest of BPD**, particularly possession of drug paraphernalia (12% vs. 5%) and possession of methamphetamine (7% vs. 4%).

The prevalence of drug abuse in the Bike Unit's territory – and consequent arrests – should come as no surprise to anyone who walked the streets of downtown Berkeley (especially Shattuck Avenue from Hearst Ave. south to Derby St.) or south of campus (including Peoples Park), particularly in the 2019-2022 period.

For example, on August 30, 2021, about 7:30 PM, I walked past an encampment on the southeast corner of Shattuck Ave. and Blake St. Three men focused intently on a vessel they held over a camp stove. They glowered at me as I passed, seemingly irritated at my presence on a public street corner. A fourth man wearing a blanket in the manner of a cape danced with a nearby streetlight pole, oblivious to the world. I later learned that, two hours later at that site, a BPD officer revived a man who may have overdosed on fentanyl.[31] The encampment, the glowering, the oblivion, the overdose has become all too typical in Berkeley, particularly in the Bike Unit's territory.

**Bike Unit arrests solely for resisting arrest were slightly more frequent than for the rest of BPD.** Arrests for which the only statutory violation listed is 148 (A)(1) (resisting the arrest itself) naturally invite scrutiny to determine whether the arrest was otherwise baseless – a possible abuse of police discretion – or whether a legitimate basis for arrest was not captured in the dataset. In the data 20 of the BPD's 8,940 arrests were solely for resisting arrest, or a rate of 0.22%. The corresponding rate for the Bike Unit was 4 of 1,390 arrests, or 0.29% (slightly higher, implying 1 more such arrest by the Bike

[31] Berkeley Police Department, *Unresponsive man revived with Narcan*, August 31, 2021, https://berkeleyca.gov/community-recreation/news/unresponsive-man-revived-narcan

Unit than if the BPD rate had obtained). This difference does not point toward a quota being satisfied with this potentially worrisome cause for arrest.

In summary the DTF/Bike Unit mix of charges (statutory violations) is more heavily weighted toward probation violations and substance abuse violations than the rest of the Police Department. Whether this emphasis reflects *lowered thresholds* below Constitutionally and Departmentally acceptable standards, or *higher prevalence* among the arrestee community in the Bike Unit territory, is an open question with the data in hand.

## Were Bike Unit Arrests Racially Discriminatory?

Ex-Ofcr. Shedoudy has alleged a "practice of…racism…inside that [DTF/Bike] unit."[32] The arrest data can identify what the Bike Unit officers *did* in practice, but not what they *felt* in principle or attitude. The racial categorization of each Bike Unit officer's arrests, and for the DTF/Bike Unit as a whole and for the rest of the BPD, is presented in Table 5.

**Table 5. Arrestee Race Proportions, DTF/Bike Unit vs. BPD**

| Race | Kacalek | Breaux | Michalczyk | Pickett | Schikore | Seaton | Shedoudy | Stern | DTF/ Bike Unit | Rest of BPD |
|---|---|---|---|---|---|---|---|---|---|---|
| Black | 42% | 52% | 48% | 54% | 30% | 44% | 44% | 51% | 47% | 50% |
| White | 52% | 27% | 41% | 31% | 51% | 40% | 37% | 39% | 40% | 28% |
| Asian | 0% | 2% | 1% | 3% | 5% | 1% | 2% | 1% | 2% | 3% |
| Hispanic | 2% | 17% | 8% | 10% | 9% | 12% | 13% | 5% | 9% | 14% |
| Other | 4% | 2% | 3% | 3% | 4% | 3% | 4% | 4% | 3% | 5% |
| Total | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

**As a unit, the DTF/Bike Unit arrested proportionately fewer Black and Hispanic persons than the rest of the BPD as a whole** (Black: 47% vs. 50%, Hispanic: 9% vs. 14%), and markedly proportionately more white persons (40% vs. 28%).

**The variation across Bike Unit officers displays no distinct pattern.** Of the Bike Unit members, Ofcr. Pickett arrested proportionately the most Black persons (54%); Sgt. Kacalek arrested proportionately the most white persons (52%); Ofcr. Schikore arrested proportionately the fewest Black persons (30%); while Ofcr. Breaux arrested

[32] "November 10, 2022, Email from Corey Shedoudy," supra n. 1, p. 36

proportionately the fewest white persons (27%) but proportionately the most Hispanic persons (17%, nearly twice the Bike Unit average).

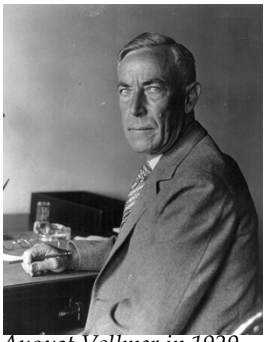
As the Center for Policing Equity summarized in 2018, at least two competing but not mutually exclusive explanations could be at work: *community factors* such as racially disparate crime rates, and *policing factors* whereby officer discretion results in observed differences.[33] It would be premature to assign variation only to policing factors from outcome data such as in Table 5. Additional information such as text messages among the Bike Unit could be illuminating.

In summary, compared to the rest of the Berkeley Police Department during the sample period 2018-2022, the DTF/Bike Unit racial disparities of arrests are weighted more heavily toward white arrestees and less toward Black and Hispanic arrestees. Nonetheless there persists a disparity in arrests of Black persons relative to their proportion of Berkeley residents due to a mix of community and policing factors. But I do not observe the operation of a quota according to race – a traditional concern about quotas – from the proportions shown for Bike Unit officers in Table 5.

## Berkeley's History Against Arrest Quotas

August Vollmer, the first chief of the Berkeley Police Department, was applauded by an audience of his fellow police chiefs in 1919 when he identified arrests as an incomplete measure of public safety:[34]

> "Police efficiency should be measured by the amount of crime, poverty and sickness which is prevented on the beat, and not by the number of arrests made by the officer. (Applause)"



*August Vollmer in 1929*
*Photo: Library of Congress*

(Chief Vollmer's speech is attached as Exhibit 3. I commend it as a marker of police thought from a century ago that could inform today's Reimagining Public Safety initiative.)

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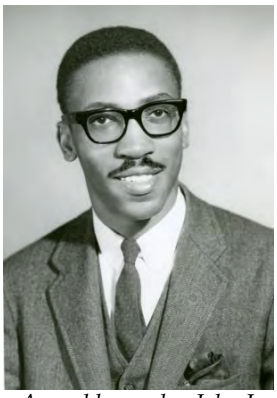
[33] Center for Policing Equity, *Berkeley Police Department - National Justice Database City Report*, May 2018, pp. 7-8, in *Report and Recommendations From Mayor's Fair and Impartial Policing Working Group*, February 23, 2021, https://berkeleyca.gov/sites/default/files/documents/2021-02-23%20Special%20Item%2001%20Report%20and%20Recommendations.pdf (pp. 51-52 of 201)

[34] August Vollmer, "The Policeman as a Social Worker," *Proceedings of the 26th Convention of the International Association of Chiefs of Police*, New Orleans, Louisiana, April 14-16, 1919, p. 36. Attached hereto as Exhibit 3.



*Assemblymember John J. Miller in 1969. Photo: California State Library*

Since 1976 California has legislated against arrest quotas[35] due to the advocacy of Assemblymember John J. Miller, who chaired the Assembly Judiciary Committee while representing Berkeley and Oakland in the then-13th District. As he said at the time,[36]

> "[A police officer] will feel under an obligation to write a ticket even in those cases where a citizen may not have committed a crime beyond all reasonable doubt…[It] goes against our historical concepts of justice and fair play."

(Asm. Miller represented Berkeley until 1978 when he was succeeded by Elihu Harris. He then served on the California First District Court of Appeal until his death in 1985.)

Recent legal commentary has explored *police quotas*, of which arrest quotas are an important variety. Professor Shaun Ossei-Owusu of the University of Pennsylvania Carey Law School has explained that, despite objections from police unions and racial minorities, arrest quotas are still practiced, even in jurisdictions in which they have been prohibited.[37] Quotas risk sacrificing quality (particularly legality) for quantity in undesirable ways.[38] His article is attached as Exhibit 5.

*Shaun Ossei-Owusu Photo: Penn Carey Law School*

(To continue the Berkeley theme of this section: Professor Ossei-Owusu earned his J.D. from Berkeley Law School and his Ph.D. from the U.C. Berkeley Department of African American Studies.)[39]

## Issues of Potential Interest to the Police Accountability Board

**The PAB should continue its investigation, I hope with the benefit of this memorandum's findings.** I suggest several investigative directions:

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[35] California Vehicle Code §§ 41600-41603, *Arrest Quotas*, supra n. 2. Also attached as Exhibit 1.
[36] *Berkeley Gazette*, "Measure to outlaw CHP's ticket quotas," July 22, 1975, p. 1. Attached as Exhibit 4.
[37] Shaun Ossei-Owusu, "Police Quotas," 96 *New York University Law Review* 529-605, available as Faculty Scholarship at Penn Law, https://scholarship.law.upenn.edu/faculty_scholarship/2835. Attached as Exhibit 5.
[38] E.g. Ossei-Owusu, supra n. 37, pp. 579-580, "Thin Evaluations," esp. fn. 305
[39] Shaun Ossei-Owusu LPS '08, https://www.law.upenn.edu/faculty/oss

1. Ex-Ofcr. Shedoudy has characterized the text messages he has already released as "the tip of the iceberg," and that he would release "hundreds of DTF/Bike Force text messages" at the conclusion of his arbitration (appealing his termination from BPD service).[40] **This Board should request those additional text messages from ex-Ofcr. Shedoudy** for review to more fully understand the operation of the alleged arrest quota that my analysis in this memorandum has failed to detect.
2. Ex-Ofcr. Shedoudy has alleged that the Bike Unit was ordered to perform "probation searches with no reasonable suspicion of a crime."[41] Table 4 above indicates that (among Bike Unit members) ex-Ofcr. Shedoudy arrested proportionally the most persons for misdemeanor probation violations. **This Board should invite the ex-officer to disclose whether the alleged arrest quota induced him to make arrests that were, in retrospect, unjustifiable in the eyes of the law.**
3. The strongest evidence that a quantitative target may have driven arrests concerned Ofcr. Michalczyk's "Operation 100." Table 2 and Figure 2 illustrate that Ofcr. Michalczyk has arrested far more people than any other BPD officer in the past five years. **This Board should seek Ofcr. Michalczyk's account of this activity,** including his perception of the beat he has patrolled, and whether Bike Unit practices (including but not limited to a quota) have given rise to it. Under the City Charter this Board can compel attendance, and even subpoena, an officer,[42] but I do not envision this account to require those measures. The purpose of my suggestion is for the Board to review this particular Police Department practice so as to understand it.
4. The arrest *quantities* reported in this memorandum are separate from their *quality*, most notably their adequacy for prosecution by the Alameda County District Attorney (ACDA). **This Board should seek from ACDA the prosecutorial outcomes for the cases brought by Bike Unit arrests and for the**

[40] "November 10, 2022, Email from Corey Shedoudy," supra n. 1, p. 37, 36
[41] "November 10, 2022, Email from Corey Shedoudy," supra n. 1, p. 36
[42] Berkeley City Charter, Article XVIII, *Police Accountability Board and Director of Police Accountability*, § 125(3)(a)(5), https://berkeley.municipal.codes/Charter/ArtXVIII

**Department as a whole.** In particular, charges that ACDA deems *legally insufficient* (possibly indicating inadequate police work) should be distinguished from charges dropped for other reasons such as the exercise of prosecutorial discretion. The consultation of an outside source as to arrest quality would benefit the Board's understanding of BPD arrest activity.

5. A separate (albeit coarse) measure of an arrest's quality is whether it has given rise to a citizen complaint to the Board, the Police Department, or the courts. **This Board should seek from BPD all complaints (indexed with the BPD Case Number) in the past 5 years to determine whether any were connected to the Bike Unit**, and how they compared to complaints about the rest of BPD.

   Any inquiry by this Board into legal actions resulting from BPD arrests would likely compete with Berkeley Copwatch's recruitment of class-action plaintiffs to sue the City of Berkeley,[43] so I am less optimistic about that effort.

6. There has been much recent discussion of an early intervention system (EIS) to "inform goals and strategies and improve [BPD] accountability and transparency."[44] **This Board should consider in its investigation the informational requirements of an EIS** capable of (correctly) detecting an alleged arrest quota, including in the case of the energetic Ofcr. Michalczyk.

   Would information outside the Police Department be required to correctly identify an undesirable (indeed, illegal) practice such as an arrest quota? If so, what? This consideration may help set realistic expectations for the performance of the EIS ultimately adopted (now in the acquisition process).

7. The quantitative analysis presented here has compared the Bike Unit (and its individual officers) to the rest of BPD to determine whether the Bike Unit exhibited problematic behavior due to the alleged arrest quota on its operations. Such problematic behavior has not been found. This analysis has *not* established that the rest-of-BPD comparator is free from problematic behavior, contrary to

[43] Berkeley Copwatch, *BPD Textgate Scandal*, supra n. 20, "We are now in a process of gathering information and looking for plaintiffs for a class-action lawsuit" (accessed August 9, 2023)
[44] Councilmember Harrison and Vice Mayor Bartlett, *Referral $100,000 to the June 2023 Budget Process to Design a Comprehensive Berkeley Police Early Intervention and Risk Management System*, April 11, 2023, https://berkeleyca.gov/sites/default/files/documents/2023-04-11%20Item%2025%20Referral%20100%2C000%20to%20the%20June%2C%202023.pdf

the assertions of one City official.[45] Indeed, these assertions were rejected by deputy city manager LaTanya Bellow: "We regret that the investigation's findings were characterized too broadly in the press."[46] I quite agree.

The analysis here *has* established that Black persons in Berkeley are arrested by both the Bike Unit and the rest of BPD at a rate more than six times their proportion of the City's residential population. Table 6 compares the racial proportions of Table 5 to the proportions from the 2020 Census.[47]

**Table 6. Berkeley Population vs. Arrestee Race Proportions, DTF/Bike Unit & BPD**

| Race | 2020 Census | DTF/ Bike Unit | Rest of BPD |
|---|---|---|---|
| Black | 7.6% | 47% | 50% |
| White | 50.2% | 40% | 28% |
| Asian | 19.9% | 2% | 3% |
| Hispanic | 13.7% | 9% | 14% |
| Other | 8.6% | 3% | 5% |
| Total | 100% | 100% | 100% |

This disparity likely traces to the community factors and policing factors touched on by the Center for Policing Equity.[48] In any event the true measure of fair and impartial policing would be whether the *threshold of arrest* across the racial categories is equal. Assessing such a threshold turns out to be a remarkably difficult technical problem.[49] Arrest data such as in Tables 5 and 6 do not suffice to establish that proposition, so sliding from (mathematical) racial *disparity* to (behavioral) racial *bias* would be unjustified at this stage.

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[45] Emilie Raguso, "No arrest quotas, no racial bias: Berkeley police bike team cleared of claims by fired cop," The Berkeley Scanner, July 20, 2023, https://www.berkeleyscanner.com/2023/07/20/policing/berkeley-police-bike-team-cleared-systemic-problems/ ("'The investigation found that the department does not have a practice of racial bias,' said city spokesman Matthai Chakko. 'The investigation found that the department does not have any arrest quotas.'")

[46] LaTanya Bellow remarks, City Council regular meeting, July 25, 2023, 2:12:01-2:13:24, http://berkeley.granicus.com/player/clip/5093?view_id=5&redirect=true&entrytime=7921&stoptime=8024&autostart=0&embed=1&redirect=true&h=40d32dbeb55e5e9296a17e679bea5bb0

[47] Wikipedia, *Berkeley, California – Demographics – 2020 Census*, https://en.wikipedia.org/wiki/Berkeley,_California#2020_census

[48] Center for Policing Equity, supra n. 33

[49] Camelia Simoiu, Sam Corbett-Davies, and Sharad Goel, "The Problem of Infra-Marginality in Outcome Tests for Discrimination," 11 *The Annals of Applied Statistics* 3: 1193-1216, September 2017, https://5harad.com/papers/threshold-test.pdf

A police officer's task is to arrest the arrest-worthy, not some arbitrary percentage of the population. For the arrestee population to match the residential population along some dimension would require (incongruously enough) a sort of quota. **This Board should remain aware of the range of factors that lead to arrest outcomes** as displayed in Tables 5 and 6. At this stage those outcomes neither indict nor exonerate the Police Department as to racial discrimination.

## Conclusions

1. I do not find quantitative evidence of an arrest quota despite the attention of the Bike Unit supervisor to the count of arrests.
2. I do find that one particular Bike Unit officer has made an unusually large number of arrests during the past five years.
3. The mix of Bike Unit arrest types is broadly consistent with the community policing orientation of the Bike Unit.
4. The mix of statutory violations charged is more heavily weighted toward drug offenses and probation violations than the overall BPD, possibly a consequence of the types of offenders found in the Bike Unit's territory.
5. The racial disparity in Bike Unit arrests is more heavily weighted toward white arrestees than arrests by the rest of the Police Department, but still exhibits the same disparity of arrests of Black persons that has long characterized police activity in Berkeley.

I recommend that the Police Accountability Board continue its investigation to understand more completely the alleged arrest quota scheme and whether individual officer behavior suffices to explain observed arrest patterns. I also recommend that other elements beyond the alleged arrest quota – notably, racist and malicious communications during City work time – be fully investigated.

Exhibit 1 – California Vehicle Code §§ 41600-41603 Arrest Quotas

Exhibit 2 – Commendation for Officers Michalczyk and Stern, April 21, 2021

Exhibit 3 – August Vollmer, "The Policeman as a Social Worker," April 1919

Exhibit 4 – *The Berkeley Gazette*, "Measure to outlaw CHP's ticket quotas," July 22, 1975

Exhibit 5 – Shaun Ossei-Owusu, "Police Quotas," *New York University Law Review*, May 2021

# EXHIBIT 1

**VEHICLE CODE - VEH**

**DIVISION 17. OFFENSES AND PROSECUTION [40000.1 - 41610]** *( Division 17 enacted by Stats. 1959, Ch. 3. )*

**CHAPTER 7. Arrest Quotas [41600 - 41603]** *( Chapter 7 added by Stats. 1976, Ch. 1111. )*

**41600.** For purposes of this chapter, "arrest quota" means any requirement regarding the number of arrests made, or the number of citations issued, by a peace officer, or parking enforcement employee, or the proportion of those arrests made and citations issued by a peace officer or parking enforcement employee, relative to the arrests made and citations issued by another peace officer or parking enforcement employee, or group of officers or employees.

*(Amended by Stats. 2002, Ch. 105, Sec. 1. Effective January 1, 2003.)*

**41601.** For purposes of this chapter, "citation" means a notice to appear, notice of violation, or notice of parking violation.

*(Added by Stats. 1976, Ch. 1111.)*

**41601.5.** For purposes of this chapter, "agency" includes the Regents of the University of California.

*(Added by Stats. 2002, Ch. 105, Sec. 2. Effective January 1, 2003.)*

**41602.** No state or local agency employing peace officers or parking enforcement employees engaged in the enforcement of this code or any local ordinance adopted pursuant to this code, may establish any policy requiring any peace officer or parking enforcement employees to meet an arrest quota.

*(Amended by Stats. 2002, Ch. 105, Sec. 3. Effective January 1, 2003.)*

**41603.** No state or local agency employing peace officers or parking enforcement employees engaged in the enforcement of this code shall use the number of arrests or citations issued by a peace officer or parking enforcement employees as the sole criterion for promotion, demotion, dismissal, or the earning of any benefit provided by the agency. Those arrests or citations, and their ultimate dispositions, may only be considered in evaluating the overall performance of a peace officer or parking enforcement employees. An evaluation may include, but shall not be limited to, criteria such as attendance, punctuality, work safety, complaints by civilians, commendations, demeanor, formal training, and professional judgment.

*(Amended by Stats. 2016, Ch. 99, Sec. 7. (AB 1953) Effective January 1, 2017.)*

# EXHIBIT 2

# BERKELEY POLICE DEPARTMENT MEMORANDUM

April 21st, 2021

To: Chief Louis
Via Chain of Command

From: Sergeant Bonaventure S-10

**Re: Commendation for Officers Michalczyk and Stern**

On 4/10/21, approximately 1030 hours, Bike Force Officers Greg Michalczyk and Thomas Stern were proactively patrolling the downtown area when dispatch broadcast a bank robbery in progress at Bank of America, located at . Within 1 minute of the broadcast, Officers Michalczyk and Stern arrived on scene and exited their vehicle. As they were approaching the bank, Officers Michalczyk and Stern observed a male, later identified as , walking in a rapid pace away from the bank. As was walking away he peered over his shoulder, looked directly at Officers Stern and Michalczyk, and began to run away. Both Officers chased after as he ran across the street and into a Wells Fargo Bank.

In an effort to detain before he could victimize anyone else inside Wells Fargo Bank, Officers Stern and Michalczyk drew their firearms and entered through the front doors.

As Officers Stern and Michalczyk entered the bank, they saw leaning against a table with his right hand concealed behind his back. They immediately gave commands to show his hands, however, he did not immediately comply. After several commands, exposed his right hand which was holding a significant amount of U.S. currency. then began to walk away from the Officers and towards a glass door that connected the bank to another business. Both Officers Michalczyk and Stern ran towards , grabbed him before he could escape, and placed him in handcuffs.

A search of revealed he was in possession of a large knife and the U.S. Currency that he stole from the bank.

A records check revealed that was on parole for prior bank robberies.

Officers Michalczyk and Stern deserve to be commended for their proactive policing and their courageous effort to detain a dangerous parolee who had just robbed a bank, and ran into another bank to elude capture. If it was not for their quick response, would have gotten away with bank robbery that day. If it was not for their courage, would have had the time to victimize more Berkeley Citizens within the second bank.

# EXHIBIT 3

# International Association
## . . . of . . .
# CHIEFS of POLICE

POLICE

## Proceedings 26th Convention

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*NEW ORLEANS, LOUISIANA*
*April 14, 15 and 16, 1919*

President Long: We shall next hear a paper prepared by Chief Vollmer, of Berkeley, California. (Applause).

Chief Vollmer: Mr. President, ladies and gentlemen: I always esteem it a privilege to prepare a paper. When the President calls upon me to prepare a paper, I am pretty well flattered. I think it is a wonderful thing to get an opportunity to present your views, even if they may be wrong. It gives the other fellow an opportunity to tell you that you are wrong, and you may get a good idea.

The subject of my paper is: "The policeman as a social worker."

Crime prevention, that all-important police function, is compelling the attention of some of the world's greatest thinkers, and though

the appreciation of criminology as a science is still in its infancy, and the surface has been merely scratched, sufficient light has been thrown on the subject to prove that old methods of dealing with crime must be changed, and newer ones adopted. The time to begin is past but the time to keep going what has been started is now.

Ordinarily, the policeman feels that his duty is well done when the offender is promptly apprehended and placed behind the bars. His failure to note that the prisoner may be the sole support of a large family, who, left to shift for themselves, must steal or starve, is only one of numerous mistakes that our peace guardians are making, in their efforts to serve the public faithfully.

Big, healthy, honest, and kind, ready to die without hesitancy when duty calls them, their usefulness is impaired by reason of their ignorance of the many causes of delinquency. Even though the experienced policeman knows that poverty, unemployment, defective home conditions, bad companions, sickness, alcohol, gambling and prostitution are crime factors, he does not feel that it is any part of his duty to assist in the correction or elimination of these great contributors to criminality.

Co-operation with social service agencies is out of the question; they can do nothing to help him, nor has he the time nor the inclination to assist them. Policemen do aid the injured, give the needy lodger a cot to sleep on, search for missing persons, and render other services not necessarily police duties, but here ends their activities as humanitarians.

However, the pendulum is beginning to swing the other way, and the policeman is beginning to realize his power as a social worker, and the future is frought with wonderful possibilities, if all will realize their potential worth.

The policeman is learning that dependency, criminality and industrial unrest have a common origin, and that upon him rest far more important and far greater obligations than the mere apprehending and prosecuting of lawbreakers. He is fast learning that dealing with criminals after the evil habits have been formed is a hopeless task as far as the eradication, or even lessening of crime is concerned.

If he would serve his community by reducing crime he must go up the stream a little further and dam it up at its source, and not wait until it is a rushing torrent, uncontrollable and resistless. Moreover, if he would succeed in his efforts he must utilize to the fullest extent every helpful agency in the community, such as schools, churches, recreation and juvenile departments, public welfare and employment bureaus, clinics, dispensaries, hospitals and fraternal and labor organizations. Co-operation is also necessary with character forming organizations, such as Boy Scouts, Campfire Girls, well organized boys' clubs, community social centers and auxiliary and junior police forces.

Nor must the modern police overlook the importance of publicity in social police work, since after all is said and done, unless the public is informed his efforts to bring about a better state of affairs will not be fruitful of results. This most desirable publicity of police social work should be spread by the citizens of the community and by proper newspaper propaganda.

And the work which Major Pullman has just referred to is one of the things that we should keep going, and keep going fast.

Much desirable publicity can also be spread by means of special educational circularization, and not by any means the least important, an occasional instructive as well as interesting moving picture of such police work should be presented.

Such moving pictures as have been spoken of by Major Pullman just

now, and others, think, specially prepared by the Los Angeles Police Department, showing the things that actually confronts the policeman, showing the difficulties and the temptations that beset him, showing after all, that the policeman is not such a bad fellow.

You will ask what can the policeman do, and how shall he proceed to get the best results. My answer is,—fight for everything which helps to decrease crime and dependency, and in this connection a few suggestions are offered for social service work in the community and state. And let me add that these are merely a few suggestions. There are many, many possibilities.

In many cities the schools are unable to accommodate all of the school children. This results in many of them being on the streets, with the attendant evils. The policeman can do his share to correct this condition by stating the facts to the voters whenever an opportunity is afforded.

It is also true that no city in this country gives sufficient thought to the physical welfare of the children. Supervised recreation grounds are few in number, and we know from experience that much of our juvenile problem may be traced to misdirected eneregy. Here again, the policeman in his rounds, and in contact with people generally, can be useful by calling attention to the community's need for sufficient play ground space for children to give expression to their play tendencies.

The school and the church as community social centers have passed the experimental stage in several cities. As agencies for the Americanization of the community's foreign element the school and the church community social centers rank first. Social centers will displace the saloons, the dance halls and gambling dens and will serve to dispel or prevent other social factors of evil tendencies. Social center activities should be encouraged in every way.

The child study departments in our schools are of great importance in detecting the child of unusual abilities or disabilities, thus making it possible to give timely physical, mental and moral direction to the potentially dependent or delinquent child as well as to give wholesome encouragement and special direction to the child of more than average ability. The data which the child study department is able to furnish will be of immense value to the teachers in our schools in training our chlidren toward better citizenship.

Free clinics and dispensaries are invaluable in the community, but frequently are handicapped by lack of fnuds. Statistics are not wanting of cases of delinquency directly attributable to physical abnormalities, such as defective vision, defective hearing, defective teeth, adenoids, and numerous other pathological conditions. Poor people may be unable to employ the services of a family physician to correct these defects, and if there are no well conducted clinics to which the child can be taken for diagnosis and treatment, there is always the possibility that the police may have to deal with the child as a delinquency problem.

Public welfare bureaus, like the clinics and dispensaries, actually have to fight for existence in this civilized country. Their efforts are often viewed with suspicion, due to the lack of knowledge of social service work. Often the public does not understand that the rehabilitation of the family by scientific social service is more beneficial than sporadic donations of money, food, fuel, clothing and shelter. The public welfare bureau performs excellent crime preventive work, and should have the support of every police official. Where is there a police department that has not dealt with the man or woman who in desperation has stolen to keep the family from starving, and further,

that has not dealt with the product of the other family which starved rather than steal?

Considering at this time only the unemployed, and not the unemployable (the latter being institutional problems), the police should not only advocate the establishment of municipal, state and federal employment bureaus, but in addition thereto, should cooperate with such bureaus to the fullest extent in finding positions for the deserving and capable. Friendly relations must be established with labor unions as their assistance is occasionally required in these cases.

Furthering the cause of laws to provide funds for orphans, industrial compensation for the injured, prevention of child labor, eight hour labor laws, probation laws, prohibition, veneral disease control and other legislative acts having for their purpose the prevention of feeblemindedness, insanity, criminality, prostitution, dependency, and the protection of the family, is the bounden duty of every member of the police force.

From investigations conducted by Healy, Bowers, Glueck, Stearns, Ball, Hoag and others, we are safe in assuming that at least one-half of our criminals and prostitutes are persons suffering from mental peculiarities or abnormalities. This immediately suggests the need for psychopathic clinics in juvenile detention homes, police departments and state prisons in order that we may reclaim those who may be helped and permanently confine the defective or insane criminal, who will always be a menace to society if permitted to roam at large. The psychopathic clinics should be identified with a state psychopathic hospital which will not only serve as a clearing house for their activities, but will also care for the incipient mental and nervous cases. The policeman can render no greater service to the community than to participate in the movement to establish psychopathic clinics and hospitals in his city and state.

I may say, just at this moment, before going further, that the Boston psychopathic hospital had sent to them, year before last, over 1500 suspected cases of venereal disease, and out of that group, just one fourth of them were found to be suffering from syphilitic infection, and this institution sent out their workers and brought in to the institution the other members of the families, and in that one-fourth of those persons who were found suffering, one-third of the persons who were brought in—coming willingly in most cases—were actually found to be infected and not known to be infected. Now, we know that 25 per cent of all of our insane are syphilitic. You will find the figures are absolute in every institution throughout the country.

Every humane and intelligent official recommends and should work for, the establishing of industrial farms for prostitutes, drunkards, drug addicts, and criminals, and more modern institutions and a more sane treatment for the insane or defective criminal.

Any one who has given thought to the conditions in the average city prison and county jail must know that they are schools for crime, and few men profit morally by their confinement in these institutions. Some better method of dealing with minor offenders should be devised. Who, assuming that the official has the proper training, is better qualified to solve this problem than the policeman?

We have discussed briefly what can be done by the policeman in the city and state, let us next consider the neighborhood, or, in language more familiar to the police, the beat. No single individual in the community has more opportunities to do good, solid, constructive social service than the intelligent, sympathetic and trained policeman. His intimate knowledge of the character of the people residing on his beat makes it possible for him to acquaint immigrants liv-

ing therein with the laws of this country, protect them from petty political and business grafters, as well as from other unscrupulous persons, and help them to become decent, law-abiding citizens.

By close co-operation with schools and public welfare agencies, he will soon learn who the potential delinquents and dependents are, and can do much to assist in preventing them from becoming social failures. Boy gangs may be transformed into juvenile police and taught to be friendly helpers, or they may be helped to join boy scouts or similar boys' organizations, and through these agencies become helpful members of the community.

Wayward girls may be saved from taking the final plunge into a life of evil, and many homes saved from disgrace and sadness, by the kindly counsel of the policeman. Sick and poor may be directed to the established places for their relief. These cases should be carefully followed up and nothing left undone which would be of assistance in their rehabilitation.

Police efficiency should be measured by the amount of crime, poverty and sickness which is prevented on the beat, and not by the number of arrests made by the officer. (Applause.)

In his daily contact with cases of delinquency the policeman has unlimited opportunities to demonstrate his ability as a social worker and public benefactor. The few cases cited below illustrate what may be done if policemen are properly trained.

Now, let me say to you that the men who took care of these cases, the men who followed up the cases that I am going to mention, are the old-time policemen that you and everybody here knows, men who have been trained, but they were the old-type, the old fellow who believed that the way to suppress crime was to knock them down and bring them in.

Annie,—aged 14, stole five dollars from the purse of a fellow employee who reported the theft to the police. The officer detailed discovered that Annie had been systematically pilfering money and articles from other employees. He learned, too, that these thefts began shortly after she had been engaged by the firm. During the examination the girl gave as her reason for taking money, "I just wanted to look nice, like the other girls." The officer visited the home and found that her family were living in an unclean and poorly furnished three-room house. Because the father earned but little money it was impossible to provide sufficient wholesome food for the family. The mother was tubercular, and the father an unstable and nervous fellow. Two sisters died in infancy. One sister now ten years of age was suffering from heart trouble, and one eight year old brother was physically weak. Annie's school teacher said that she was an ordinary pupil until she reached the fifth grade; at the age of thirteen she left the school, at which time she was doing poor work in the sixth grade. She was taken to the psychopathic clinic, where it was found that she was somewhat retarded mentally. It was the opinion of the medico-psychologist that adenoids and enlarged tonsils might be responsible for her defect. Accordingly the consent of the mother and child was secured and an appointment made with the specialist at the public clinic to perform the required operations. A change in environment and employment was also recommended by the medico-psychologist, and a position was obtained for Annie in a respectable family. The rest of the family are receiving medical aid at the dispensary and some financial help through a public welfare bureau.

Harry,—aged thirteen, was arrested for burglary and turned over to his parents for attention and correction. Later this boy entered not less than twenty stores during the night hours, and took money from

the cash registers. His family history was good, no evidence of anything serious on either side. Two sisters, sixteen and eighteen, respectively, were apparently normal girls. From the family physician and parents it was learned that Harry was an ordinary boy physically. He had had measles, mumps and whooping cough when a little fellow, but had never suffered any severe ills. This child was also taken to the psychopathci clinic where it was learned that he was two years above his age. His parents accepted the suggestion made by the medico-psychologist and sent the boy to a relative in the country. It was also arranged at the same time to have him advanced two grades in his school work. From the last report received concerning this boy he is making good, absolutely, and without the advantage of the psychopathic clinic, plus intelligent handling of the case by the policeman he would have been in a reform school learning to be a real crook.

John Doe—age fifty eight years, high school teacher and inventor, was arranged on a charge of burglary. From the investigation conducted by the officers it was learned that his previous reputation for honesty in the community was excellent. Some years prior to his arrest the prisoner suffered a nervous collapse and quit teaching for two or three years. During this period he conducted a curio store in a neighboring town; there was no patronage, and he was obliged to close the doors of his place of business. He was heavily in debt and again took up teaching as a profession. His creditors crowded him for money and he eventually fell into the hands of some loan sharks. At this time he was also busily engaged in perfecting an invention which would assist in aerial navigation. Between teaching and work on his invention he was considerably overworked. From the general appearance and conduct of Doe at the time of his arrest the investigating officer came to the conclusion that he was a medical problem, despite the fact that he answered questions intelligently, and seemingly was possessed of all of his faculties. The medical examiner reported that the prisoner was a neurasthenic with morbid impulses; the result of over-work and financial worries. He was turned over to his family for care and treatment, and subsequently confined in a private sanitarium where he remained for a year or more. Through a few friends who were interested in the case, sufficient money was secured to tide the family over the difficult period immediately following his arrest. John Doe has recovered sufficiently to return to the community where he has again firmly established himself, and is regarded as one of our best citizens.

Now, I might go on and cite to you cases indefinitely. I am full of them. But it is enough to show you what may be done by the policeman.

Regardless of the policeman's efforts to contribute to social and economic betterment in the manner described above, we cannot close our eyes to the fact that crime will always be with us. Much can be done to further reduce the evil, providing we raise the educational and intellectual standard of our police departments, elevate the position of the policeman to that of a profession, eliminate politics entirely from the force, and secure the people's confidence, sympathy, respect and co-operation.

Policemen should jealously guard the reputation of their profession, and establish a code of ethics. Any and every member of the force who violates the provisions of the code should be vigorously prosecuted and expelled from the ranks. Policemens' lives must be dominated by the highest ideals if they hope to establish themselves in the affections of the people, and win for the profession such an exalted

plane that positions on the force will be sought for by the nation's best manhood. Let us speed the day when the appointment as a policeman shall be considered the greatest honor that the municipality may bestow upon one of its citizens. (Applause.)

# EXHIBIT 4

THE INDEPENDENT

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**WEATHER**

Fair through tomorrow except patchy night and morning clouds along the coast. Slightly warmer with highs today and tomorrow in the 60s along the coast to low 80s inland. Lows tonight in the 50s. West to northwest winds at 10-20 m.p.h.

# Measure to outlaw CHP's ticket quotas

The Chairman of the Assembly Judiciary Committee, Assemblyman John J. Miller (D-Berkeley-Oakland) said today the CHP "ticket slow-down" has persuaded him to introduce legislation out-lawing ticket quotas.

"For years we have been told that the highway patrol and various city and county traffic police do not have a quota of tickets to write," Miller said, "but recent statements by the CHP Commissioner which promise discipline and even dismissal of officers whose number of tickets fall below a certain number convinces me that an expected level of crimes is depended on by the CHP management. A quota by any other name — 'historical level of citation issuance' — is still a quota."

"If a CHP officer or any city or county police officer knows that he is expected to write so many citations, he will feel under an obligation to write a ticket even in those cases where a citizen may not have committed a crime beyond all reasonable doubt," Miller said. "It is simply unrealistic to tell the average California driver that his word is as good as that of a traffic cop in court. So the driver, I believe, has 1½ strikes against him: an officer who is pressured by his superiors to write citations; and a rubber stamp traffic court system which finds 90 percent of those cited guilty."

Miller said his legislation will prohibit ticket quotas in California for the same reason that speed traps were outlawed: "they are unfair, undemocratic and unjust. The spectacle of cities gaining revenue for the conviction of citizens, and judges creating revenue by making criminals out of those brought before them for fair trials somehow goes against our historical concepts of justice and fair play," he said.

The Bay Area legislator said he believes that traffic policemen should be guardians of safety on California streets and highways. "They should catch speeders who are endangering others and be helpful to motorists who are stranded or have flat tires. But if they find more stranded motorists on a given week than speeding motorists, should they be demoted or disciplined?"

Miller said he expects his legislation to be opposed by cities and counties "who make money off ticket quotas."

# EXHIBIT 5

# POLICE QUOTAS

SHAUN OSSEI-OWUSU*

*The American public is slowly recognizing the criminal justice system's deep defects. Mounting visual evidence of police brutality and social protests are generating an appetite for something different. How to change this system is still an open question. People across the political spectrum vary in their conceptions of the pressing problems and how to solve them. Interestingly, there is one consequential and overlooked area of the criminal justice system where there is broad consensus: police quotas.*

*Police quotas are formal and informal measures that require police officers to issue a particular number of citations or make a certain number of arrests. Although law enforcement leadership typically denies implementing quotas, courts, legislators, and officers have all confirmed the existence of this practice and linked it to odious criminal justice problems such as racial profiling, policing for profit, and overcriminalization. These problems have led legislators in many states to implement statutory prohibitions on quotas. Some of these statutes are of recent vintage and others are decades old. Nevertheless, these prohibitions and their attendant litigation have escaped sustained analytical scrutiny. Legal scholars typically overlook police quotas, subsume them within other categories (e.g., broken windows policing), or give pat acknowledgment of their existence without explaining how they work.*

*This Article corrects these omissions and makes two arguments. First, it contends that police quotas are a significant but undertheorized feature of criminal law and procedure. Quotas make police rewards and sanctions significant features of punishment in ways that can trump criminal offending and pervert due process principles. Second, it argues that quota-based policing is a unique area where there is widespread agreement and possibilities for change. Liberals, libertarians, conservatives, police officers, police unions, and racial minorities have all criticized police quotas. These vastly different constituents have argued that quotas distort police discretion and produce unnecessary police-civilian interactions. This Article supplements these arguments with a novel descriptive, statutory, and jurisprudential account of police quotas in the United States. It offers a framework for understanding the arguments for and objections to quotas, and proposes some normative strategies that could build on statutory and litigation successes.*

* Copyright © 2021 by Shaun Ossei-Owusu, Presidential Assistant Professor of Law, University of Pennsylvania Law School. This Article benefitted from feedback and conversations with Regina Austin, Mitch Berman, Stephanos Bibas, Nathaniel Bronstein, Guy-Uriel Charles, Cary Coglianese, Dan Epps, Kimberly Ferzan, Allison Hoffman, Paul Heaton, Leo Katz, Jonathan Klick, Eisha Jain, Elizabeth Joh, Ben Levin, Sandra Mayson, Sunita Patel, John Rappaport, Dan Richman, Paul Robinson, Stephen Rushin, Madeline Verniero, and the faculties of the Loyola University Chicago and Penn Law. Additional thanks to Madeline Verniero for excellent research and editorial support as well as the editors at the *New York University Law Review*. All errors are mine.

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## INTRODUCTION

Before the Great Lockdown, criminal justice reformers across the ideological spectrum lamented "policing for profit."[1] Commentators usually discuss this practice through the more sanitized sounding category of "legal financial obligations" (LFOs).[2] The economic implications of the COVID-19 pandemic have put a spotlight on this type of predatory "cash register justice."[3] As of this writing, the National League of Cities has reported that 2,100 cities anticipate budget deficits.[4] Since hundreds of jurisdictions have relied on LFOs in the past,[5] and some have continued to do so during the crisis,[6] there is good cause for concern that LFOs will figure into an uncertain economic future. As Professor Brandon Garrett notes, "[a]fter the last financial crisis, most states ramped up on fines and fees," transformed police

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[1] DICK M. CARPENTER II, LISA KNEPPER, ANGELA C. ERICKSON & JENNIFER MCDONALD, INSTITUTE FOR JUSTICE, POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE (2d ed. 2015); Roger Pilon, *America's Frightening "Policing for Profit" Nightmare*, NAT'L INT. (Jan. 23, 2015), https://nationalinterest.org/feature/americas-frightening-policing-profit-nightmare-12094; Emma Andersson & Susan Dunn, *'Policing For Profit' Is Alive and Well in South Carolina*, ACLU (Feb. 12, 2019, 3:45 PM), https://www.aclu.org/blog/criminal-law-reform/reforming-police/policing-profit-alive-and-well-south-carolina.

[2] These LFOs include, but are not limited to: "usage fees" levied on defendants for their arrest, adjudication, incarceration, probation, and electronic monitoring; statutory fines that impose economic sanctions as punishments for crimes; and civil forfeiture laws that allow governments to confiscate money and property that are purportedly linked to crime.

[3] *See* Laura I. Appleman, *Nickel and Dimed into Incarceration: Cash Register Justice in the Criminal System*, 57 B.C. L. REV. 1483 (2016) (discussing the turning of the criminal justice system into a revenue center for state courts and corrections); *see also Developments in the Law—Policing and Profit*, 128 HARV. L. REV. 1706, 1723–46 (2015) (discussing usage fees, for-profit probation supervision and civil forfeiture); Bernadette Atuahene, *Predatory Cities*, 108 CALIF. L. REV. 107, 175–78 (2020) (discussing predatory fees various U.S. cities impose on residents through excessive fines, property forfeiture, and debtors' prisons); Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CALIF. L. REV. 277, 285–88 (2014) (describing various economic sanctions, including statutory fines, restitution, forfeitures, administrative court costs, incarceration costs, parole processing, and probation fees).

[4] NAT'L LEAGUE OF CITIES & U.S. CONF. OF MAYORS, THE ECONOMY AND CITIES: WHAT AMERICA'S LOCAL LEADERS ARE SEEING (2020), https://www.usmayors.org/2020/04/14/the-economy-and-cities-what-americas-leaders-are-seeing.

[5] *See* Mike Maciag, *Addicted to Fines*, GOVERNING (Sept. 2019), https://www.governing.com/topics/finance/gov-addicted-to-fines.html (finding through an extensive national analysis that fines fund "more than 10 percent of general fund revenues in nearly 600 U.S. jurisdictions").

[6] Brandon L. Garrett, *Guest Post: Court Fines and Fees Shouldn't Be Used to Recover Lost Revenue from Pandemic*, WASH. POST (May 12, 2020, 7:00 AM), https://www.washingtonpost.com/crime-law/2020/05/12/guest-post-court-fines-fees-shouldnt-be-used-recover-lost-revenue-pandemic ("[S]ome jurisdictions are still jailing people for unpaid debt, potentially exposing them to the novel coronavirus, which is exploding in our jails.").

officers into "revenue collectors," and relied on "our poorest citizens to fund basic functions of government."[7]

Amidst the epidemiological crisis, the summer 2020 protests inspired a new, popular reexamination of policing. Rooted primarily in anger around anti-Black police violence, the protests productively altered public opinion and amplified longstanding issues tied to the political economy of policing.[8] Concerns about cities using the police to generate municipal funds—which garnered attention after the Ferguson unrest six years ago[9]—remain on the reform agenda. But now there is closer scrutiny on the core functions of the police. Popular opinion still hews to the belief that law enforcement serves a public safety function,[10] but visual evidence of racialized police killings is applying pressure to that assumption. These instances of state violence have forced the general public to grapple with the racially and financially exploitative nature of the criminal justice system. Lurking beneath these concerns is a practice that has eluded legal scholars despite its reported prominence in criminal justice administration: police quotas.

Police quotas are formal and informal measures that require police officers to issue a particular number of citations or make a certain number of arrests. They are sometimes formal and pre-specify a quantity.[11] Other times, they are informal and premised on an implied understanding that employment actions—promotion, compensation, or discipline—will be predicated on an officer's ability to engage in a "sufficient" amount of enforcement activity.[12] Evaluative jargon such

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[7] *Id.*

[8] *See* Nate Cohn & Kevin Quealy, *How Public Opinion Has Moved on Black Lives Matter*, N.Y. TIMES (June 10, 2020), https://www.nytimes.com/interactive/2020/06/10/upshot/black-lives-matter-attitudes.html (noting leftward public opinion shift in support of race and criminal justice issues).

[9] *See* Editorial, *Policing for Profit Perverts Justice: Our View*, USA TODAY (Mar. 11, 2015, 7:01 PM), https://www.usatoday.com/story/opinion/2015/03/11/ferguson-mo-police-traffic-tickets-justice-department-editorials-debates/70175690 (bringing attention to "policing for profit" after Ferguson protests).

[10] *See* Kendall Karson, *64% of Americans Oppose 'Defund the Police' Movement, Key Goals: Poll*, ABC NEWS (June 12, 2020, 5:30 AM), https://abcnews.go.com/Politics/64-americans-oppose-defund-police-movement-key-goals/story?id=71202300 (describing how Americans oppose calls for defunding the police).

[11] *See, e.g.*, MO. ANN. STAT. § 304.125 (West, Westlaw through 2020 2d Reg. Sess.) ("No political subdivision or law enforcement agency shall have a policy requiring or encouraging an employee to issue a certain number of citations for traffic violations on a daily, weekly, monthly, quarterly, yearly, or other quota basis.").

[12] *See, e.g.*, TEX. TRANSP. CODE ANN. § 720.002(a)(1) (West, Westlaw through end of 2019 Reg. Sess.) ("A political subdivision or an agency of this state may not establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a peace officer according to the officer's issuance of a predetermined or specified number of any type or combination of types of traffic citations.").

as "benchmarks,"[13] "productivity goals,"[14] and a host of other terms often obscure the operation of what are sheer police quotas.[15]

Quotas may seem like an inapt object of inquiry considering current calls for radical change as opposed to incremental reforms. But, as this Article shows, quotas animate important criminal justice issues, chiefly racial profiling, civil rights violations, and police corruption. In *Floyd v. City of New York*, the federal decision that struck down the New York Police Department's racially discriminatory stop-and-frisk policy, quotas were prominent themes.[16] The Department of Justice's report on Ferguson, which made the country aware of policing for profit, highlighted quota abolition in its Recommendation section.[17] Interestingly, more than twenty states have statutory prohibitions on police quotas.[18] Criminal defendants, civil rights plaintiffs, aggrieved police officers, and police unions have deployed these statutes in state and federal courts to challenge quotas and extract concessions from municipalities.[19] Nevertheless, police quotas, like criminal enforcement mechanisms more generally,[20] have not received meaningful consideration by legal academics.[21] Instead, scholars typically engage quotas via the related but analytically distinct practice of broken windows policing or anecdotal accounts.[22] This lack of sustained attention

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[13] SERDAR KENAN GUL & PAUL E. O'CONNELL, POLICE PERFORMANCE APPRAISALS: A COMPARATIVE PERSPECTIVE 71 (2013) (acknowledging the existence of quotas and noting how some police departments use "benchmark targets for summonses and arrests").

[14] POLICE REFORM ORG. PROJECT, WORKING TOWARDS A MORE SAFE AND FAIR CITY: ABOLISHING QUOTAS AND INVOLVING COMMUNITIES 2 (2014), https://www.policereformorganizingproject.org/wp-content/uploads/2012/09/Working_Towards_a_More_Safe_and_Fair_City.pdf ("'[P]roductivity goals'[sic] are a euphemism for a 'quota system.'").

[15] *See infra* notes 32–36.

[16] 959 F. Supp. 2d 540, 596–602 (S.D.N.Y. 2013).

[17] U.S. DEP'T OF JUST., C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 91 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [hereinafter Ferguson Report].

[18] *See infra* Appendix A.

[19] *See infra* Part II.

[20] Alice Ristroph, *The Thin Blue Line from Crime to Punishment*, 108 J. CRIM. L. & CRIMINOLOGY 305 (2018) (describing how substantive criminal law scholarship rarely addresses issues of police conduct).

[21] Some noteworthy exceptions that have given some attention to quotas include Nathaniel Bronstein, Note, *Police Management and Quotas: Governance in the CompStat Era*, 48 COLUM. J.L. & SOC. PROBS. 543 (2015) and Mary De Ming Fan, *Disciplining Criminal Justice: The Peril Amid the Promise of Numbers*, 26 YALE L. & POL'Y REV. 1 (2007).

[22] On broken windows policing, see generally ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING (2018) (investigating the consequences of broken windows policing in New York City). For anecdotal accounts, see COREY PEGUES, ONCE A COP: THE STREET,

persists despite scores of case law,[23] empirical evidence,[24] references in government reports,[25] and annual settlements,[26] that all point to the existence of police quotas across the country.

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THE LAW, TWO WORLDS, ONE MAN 146 (2016) (former NYPD officer describing the existence of quotas in the department); NORM STAMPER, TO PROTECT AND SERVE: HOW TO FIX AMERICA'S POLICE 1–4 (2016) (former San Diego officer describing the existence of quotas in his department); John Marzulli, *We Fabricated Drug Charges Against Innocent People to Meet Arrest Quotas, Former Detective Testifies*, N.Y. DAILY NEWS (Oct. 13, 2011), https://www.nydailynews.com/news/crime/fabricated-drug-charges-innocent-people-meet-arrest-quotas-detective-testifies-article-1.963021 (officer admitting that the NYPD framed people to meet quota requirements).

[23] *See, e.g.*, Becker-Ross v. State, 595 S.W.3d 261, 265, 269, 272 (Tex. App. 2020) (finding that there was sufficient evidence to show that the city administrator pressured the city marshal to write a certain number of traffic tickets within a specified period in violation of state prohibition on quotas); Policemen's Benevolent Labor Comm. v. City of Sparta, No. 5-19-0039, 2019 WL 5457948, at *1, *7 (Ill. App. Ct. Oct. 22, 2019) (concluding that a police department's practice of evaluating citations, traffic stop warnings, and extra-duty assignments violated state law prohibiting the implementation of quotas); Gerwer v. Kelly, 980 N.Y.S.2d 275, 275 (Sup. Ct. 2013) (ruling against an officer who falsified thirty-seven fictious summonses in order to meet an alleged quota requirement); People v. Schwartz, No. 282028, 2009 WL 30457, at *1, (Mich. Ct. App. Jan. 6, 2009) (noting that the defendant officer's issuing of four undated speeding tickets to meet a quota would secure entitlement to overtime).

[24] *See* JOHN MCLAUGHLIN, MCLAUGHLIN & ASSOC.'S, NEW YORK PATROLMEN'S BENEVOLENT ASSOCIATION MEMBERSHIP STUDY 53 (2016), https://www.nycpba.org/media/19346/160315-pbasurvey.pdf (surveying approximately 6,000 members of New York City's police union which found that 89% of respondents believed that NYPD supervisors imposed quotas); Jonathan Auerbach, *Are New York City Drivers More Likely to Get a Ticket at the End of the Month?*, SIGNIFICANCE MAG., Aug. 2017, at 25 (using significance testing to conclude that New York City drivers are more likely to receive a ticket at the end of the month, substantiating a long-held belief about the use of quotas); Scott W. Phillips, *Police Discretion and Boredom: What Officers Do When There Is Nothing to Do*, 45 J. CONTEMP. ETHNOG. 580, 589 (2016) (qualitative study of a police department finding that officers noted that there was no formal quota but that they were expected write about ten tickets a month).

[25] *See* Ferguson Report, *supra* note 17, at 11; U.S. DEP'T OF JUST., C.R. DIV. & U.S. ATT'Y.'S OFF., DIST. OF N.J., INVESTIGATION OF THE NEWARK POLICE DEPARTMENT 21 (2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf.

[26] *See* Mike Sprague, *Whittier to Pay $3 Million to Settle Police Ticket Quota Case*, WHITTIER DAILY NEWS (Jan. 16, 2020, 2:11 PM), https://www.whittierdailynews.com/2020/01/15/whittier-to-pay-3-million-to-settle-police-ticket-quota-case; Matt Sledge, *Gretna Police Agree to $70K Settlement in Ex-Cop's Lawsuit Claiming Arrest Quotas*, NEW ORLEANS ADVOC., (June 3, 2019, 11:12 AM), https://www.nola.com/news/courts/article_b1990837-e425-5c46-a3d8-4817a8b81367.html; Joshua Sharpe, *DeKalb Still Denies Police 'Quota' System After Settling Suit for $150K*, ATLANTA J.-CONST. (Sept. 27, 2018), https://www.ajc.com/news/crime—law/dekalb-still-denies-police-quota-system-after-settling-suit-for-150k/IuFHQg3pT4lnsVyPETZxkM; Peggy Wright, *Mendham Twp. Cop's 'Ticket Quota' Lawsuit Settles for $650K*, MORRISTOWN DAILY REC. (Dec. 5, 2017, 8:37 AM), https://www.dailyrecord.com/story/news/2017/12/04/mendham-twp-cops-ticket-quota-lawsuit-settles-650-k/918964001; Hailey Branson-Potts & Emily Alpert Reyes, *City Will Pay LAPD Officer Nearly $1 Million to End Lawsuit over Ticket Quotas*, L.A. TIMES (Jan. 13, 2016, 11:05 PM), https://www.latimes.com/local/cityhall/la-me-0114-lapd-

This Article makes two straightforward arguments. First, it contends that police quotas shape the enforcement of criminal laws by introducing a host of perverse incentives into an already insecure body of criminal procedure. This leads to the Article's second claim. I argue that quota-based policing is a discrete area where there is widespread agreement about the problems with quota-based policing and possibilities for change. Police unions, often considered the source of our penal status quo, have argued that such requirements distort discretion and generate unnecessary police-civilian contact.[27] Liberal, conservative, and libertarian reformers have all lodged similar arguments and emphasized the ways quotas lead to violations of civil liberties.[28]

The broad condemnation of quota-based policing makes this issue a particularly ripe place for reform, and an area that should be scrutinized by legal scholars and advocates. This Article inaugurates the conversation. It builds on the fragments of existing scholarship to offer a robust framework for understanding police quotas. It offers a novel descriptive and statutory account of police quotas and is the first piece of scholarship to describe the jurisprudential landscape of this practice.

Eliminating police quotas would be no panacea. However, it is an underappreciated area that has synergies with a larger constellation of penal change strategies. For abolitionists, addressing quotas could be an interim step toward a world with a smaller police imprint.[29] If advocates achieve the goal of defunding the police, addressing quotas will become especially central, as smaller police forces may increas-

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settlement-20160114-story.html; J. David Goodman, *Officer Who Disclosed Police Misconduct Settles Suit*, N.Y. Times (Sept. 29, 2015), https://www.nytimes.com/2015/09/30/nyregion/officer-who-disclosed-police-misconduct-settles-suit.html ($600,000); Dave Phillips, *Former Novi Officer Gets $280,000 in Ticket Quota Lawsuit Settlement*, Oakland Press (Apr. 17, 2014), https://www.theoaklandpress.com/news/nation-world-news/former-novi-officer-gets-280-000-in-ticket-quota-lawsuit-settlement/article_35e4db17-f817-5965-98c9-cef2484f562b.html; Joel Rubin & Catherine Saillant, *L.A. Approves $6-Million Settlement over Alleged Traffic Ticket Quotas*, L.A. Times (Dec. 10, 2013, 12:00 AM), https://www.latimes.com/local/la-xpm-2013-dec-10-la-me-tickets-20131204-story.html.

[27] *See infra* Section III.C.1.

[28] *See infra* Section III.C.3.

[29] *See* Dorothy E. Roberts, *The Supreme Court, 2018 Term - Foreword: Abolition Constitutionalism*, 133 Harv. L. Rev. 1, 11, 114–18 (2019) (arguing that abolition movement activists can utilize the Reconstruction Amendments and "non-reformist reforms" to temporarily further their aims and ultimately build a society without prisons); Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. Rev. 405, 460 (2018) (describing how the abolitionist approach focuses on reducing the greater social and fiscal footprint of police on society as opposed to efforts to improve the police and criminal law).

ingly rely on quotas and technology to do more with less personnel.[30] This is precisely what has occurred in Camden, New Jersey, a city that is considered a model for police reform.[31] For law enforcement officials who oppose quotas and a general public who believe the police have a role in our social order, attention to quotas could lead to more rigorous conversations about the function of police.

This Article proceeds in four Parts. Part I sketches the different ways police quotas take shape organizationally. It then offers a brief legislative history and analysis of anti-quota statutes.

Part II moves to the caselaw and describes how police officers, criminal defendants, and civil rights plaintiffs have challenged police quotas. This Part shows how doctrinal and evidentiary hurdles have hampered claims, but also details how some parties have succeeded in court or extracted settlements from municipalities.

Part III captures the definitional contours of quotas. First, I discuss the defensibility of this practice. Though often unarticulated, police quotas give law enforcement leadership a way to monitor, measure, and evaluate police activity while guarding against legitimate concerns about officers shirking their duties. Such evaluations are akin to the kinds of assessments that are standard in many workplaces. This Part offers responses to these defenses. It also describes additional problems that police quotas pose for three groups: police officers forced to comply with these requirements; marginalized communities that are often the subjects of quota-satisfying officers; and a general public that can be deprived of efficiently used resources because of quotas.

Part IV takes a normative turn. This Part offers suggestions for how to raise public awareness of quota-based policing and generate coalition-building in states that do not already have quota prohibitions. This Part also provides suggestions on how to improve existing statutes.

The Conclusion offers thoughts on the urgency of this topic, and the Appendices offer a comprehensive list of quota bills and statutes.

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[30] Stephen Rushin & Roger Michalski, *Police Funding*, 72 FLA. L. REV. 277, 285 (2020) (suggesting that defunding police could lead to excessive ticketing and civil asset forfeiture); *see* Ingrid Burrington, *What Amazon Taught the Cops*, NATION (May 27, 2015), https://www.thenation.com/article/archive/what-amazon-taught-cops (discussing how algorithmic criminal justice assumes the credibility of the underlying crime data and noting how "countless scandals over quotas" in policing suggest that this is a huge assumption).

[31] *See* Sidney Fussell, *What Disbanding the Police Really Meant in Camden, New Jersey*, WIRED (July 1, 2020, 3:03 PM), https://www.wired.com/story/disbanding-police-really-meant-camden (describing the increase in electronic surveillance after the city overhauled its police department); *see infra* notes 177–83 and accompanying text.

## I
## THE TEXTURE OF POLICE QUOTAS

This Part maps the terrain of police quotas. Scholars and the media often discuss the existence of quotas, but the term itself is often undefined or poorly described. Section I.A offers a robust representation of how quotas are administered. Section I.B details the statutory landscape of anti-quota laws and categorizes the twenty-one states that have enacted such legislation.

### *A. The Definitional Landscape*

Quotas are formal and informal measures that require law enforcement to have a certain number of contacts with individuals or issue a certain number of citations or arrests. Because quotas have a pejorative connotation, law enforcement organizations use a range of alternative terms to accomplish the same work. These phrases—which are sometimes used earnestly and sometimes as subterfuge—include "benchmarks,"[32] "productivity goals,"[33] "targets,"[34] "performance management,"[35] and "objectives."[36] To get a more granular understanding of quotas, one might consider four features of this police practice: 1) the level of formality; 2) how they are quantified; 3) the law enforcement action that is required; and 4) the prospect of an adverse/favorable employment action.

#### *1. Formality*

Quotas range in their formality. Like any other policy, quotas can operate through formal channels (e.g., in writing or through official

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[32] GUL & O'CONNELL, *supra* note 13.

[33] *See* POLICE REFORM ORG. PROJECT, *supra* note 14; Robert Gangi, *When Police Are Encouraged to Abuse, Not Protect*, ALTERNET (Nov. 30, 2012), https://www.alternet.org/2012/11/when-police-are-encouraged-abuse-not-protect ("NYPD officials use the term 'productivity goals' as a poorly veiled euphemism for the Department's quota system, as a thin cover for the pressure placed on street officers to make an expected number of arrests, or to issue a sufficient number of summonses.").

[34] Malcolm K. Sparrow, *Measuring Performance in a Modern Police Organization*, NEW PERSPS. POLICING BULL., Mar. 2015, at 1, 18 ("[S]ome departments set targets for functional outputs, including enforcement activities such as arrests, stops, searches and traffic citations.").

[35] Jen Chung, *Bloomberg Says Police Quotas Will Be Investigated*, GOTHAMIST (Nov. 9, 2010, 5:45 PM), https://gothamist.com/news/bloomberg-says-police-quotas-will-be-investigated (quoting Mayor Bloomberg as saying "we don't have quotas . . . but we certainly have performance management").

[36] TODD DOUGLAS, THE POLICE IN A FREE SOCIETY: SAFEGUARDING RIGHTS WHILE ENFORCING THE LAW 71 (2017) (noting that many police agencies "have informal quotas: *precinct averages*, *benchmarks*, *performance goals*, *objectives*, *targets*, and other euphemistic references to what is essentially a quota").

communication) or through informal mechanisms. A useful example of a formal quota can be found in Ridgetop, Tennessee.[37] The city of approximately 2,000 people disbanded its police department in 2019 after officers exposed an attempt by the mayor and vice mayor to impose a quota. Officers recorded both officials demanding that the department write 210 citations to help generate revenue for the city.[38] Another example is from Brooklyn, New York, where a New York Police Department (NYPD) official posted memos in a police stationhouse detailing how many summonses cops were required to hand out.[39] One document outlined the specific number of tickets needed: sixty cell phone, fifty seatbelts, sixty-five double park, forty bus stops, and twenty-five tints.[40] Another memo began, "[g]ood day we need the following," and proceeded to list various moving violations.[41] That document required that summonses be handed out at accident-prone locations and specified five intersections.[42]

Quotas can also be informal and based on unwritten requirements or implied understandings.[43] In North Brunswick, New Jersey, one veteran officer recounted how officers would receive four hours of overtime pay for every forty tickets written.[44] Though the police department had no official policy, there was an "unwritten understanding."[45] Another law enforcement official described how officers would "go hunting" in Black and Latinx neighborhoods and compete to see who could issue the most tickets.[46] This kind of informality is especially common in states that legally prohibit police quotas, since police brass want to avoid memorializing requirements in ways that

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[37] Zuri Davis, *A Tennessee Police Department's Last Officer Resigns over Ticket Quotas*, REASON (Nov. 6, 2019, 2:45 PM), https://reason.com/2019/11/06/a-tennessee-police-departments-last-officer-resigns-over-ticket-quotas/printer.

[38] *Id.*

[39] *See* Chung, *supra* note 35.

[40] *Id.*

[41] James Fanelli, *Cops at Brooklyn's Crime-Ridden 77th Precinct Told to Meet Quotas for Moving Violations, Memos Say*, N.Y. DAILY NEWS (Nov. 8, 2010), https://www.nydailynews.com/new-york/cops-brooklyn-crime-ridden-77th-precinct-told-meet-quotas-moving-violations-memos-article-1.452621.

[42] *Id.*

[43] *See* Rich Morin, Kim Parker, Renee Stepler & Andrew Mercer, *Inside America's Police Departments*, PEW RSCH. CTR. (Jan. 11, 2017), https://www.pewsocialtrends.org/2017/01/11/inside-americas-police-departments (finding that about a third of police officers say they are expected to meet a quota for arrests and tickets).

[44] Sarah Wallace, *NJ Police Targeted Black and Latino Neighborhoods to Fulfill Ticket Quotas, Cops Say*, NBC N.Y. (Feb. 13, 2020, 8:08 PM), https://www.nbcnewyork.com/investigations/nj-police-targeted-black-and-latino-neighborhoods-to-fulfill-ticket-quotas-cops-say.

[45] *Id.*

[46] *Id.*

can be subject to discovery in future litigation or scrutinized by the media.

### 2. *Numerical Requirements*

Police quotas have quantitative dimensions. Sometimes they are numerically specific, as in the Brooklyn example mentioned above. Other examples are instructive. Police documents from Dekalb County, Georgia, for instance, revealed that officials kept detailed statistics on officer activities, with categories including "citation goal[s]," "total citations," and "% to goal citations."[47] A slogan for the police department was, "[t]wo tickets a day keep the sergeants away. Five a day keep the lieutenants at bay."[48] In Pennsylvania, two officers lied about a DUI arrest and were caught on police dashcam video conferring about which one would get credit for the arrest because they both needed their "20 for the month."[49] When criminal justice commentators discuss quotas, they usually focus on these numerically specific requirements.

But not all quotas are numerically precise. Sometimes the numerical dimension of a quota requirement is just a general guide and some quotas don't specify any number at all. On the former, Denver, Colorado, is noteworthy. Colorado has no statutory prohibition on quotas. In 2016, the City, which generated $30 million annually from parking citations, inked a $50 million contract with a software company to manage its parking enforcement.[50] Contract documents indicated that predictive algorithms produced a "daily citation expectation" for agents.[51] The City insisted that the goal was not a strict requirement but a "guide."[52] A legislative audit of West Virginia State Police, which identified an informal quota regime, illustrates the further vagueness of quotas that specify no number at all. The auditor's survey included many responses from officers who indicated

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47 Rhonda Cook, *Arrest Quotas Led Dekalb Officer to Plant Drugs, Lawsuit Claims*, ATLANTA J.-CONST. (Nov. 28, 2016), https://www.ajc.com/news/local/arrest-quotas-led-dekalb-officer-plant-drugs-lawsuit-claims/5AMfRowntaQrZfQLsAhL6K.

48 Sharpe, *supra* note 26.

49 Peter Hall, *Lawsuit Ends with Reminder to Pennsylvania State Troopers About Rule Against Ticket Quotas*, MORNING CALL (June 26, 2018), https://www.mcall.com/news/police/mc-nws-pa-state-police-dui-quota-settlement-20180626-story.html.

50 Jeremy Jojola, *A Quota Behind Denver Parking Citations?*, 9NEWS (Feb. 27, 2017, 11:12 PM), https://www.9news.com/article/news/local/investigations/a-quota-behind-denver-parking-citations/415777446.

51 *Id.*

52 *Id.*

that no specific requirements existed, but that "numbers are strongly emphasized."[53]

*3. Law Enforcement Activity*

Quotas require a particular kind of law enforcement activity. This is typically an arrest, citation, or ticket. In rare instances, they require contacts, warnings, or stops. Arrests, citations, and tickets are at the center of police quotas and constitute much of this Article's discussion. Allegations and settlements surrounding arrest quotas have hounded the NYPD for years.[54] Citations and tickets were at the center of the Department of Justice's Ferguson Report.[55] Contacts or stops require more explanation.

Sometimes contacts substitute for arrests and citations. For example, in Arizona, a state without a statutory prohibition on quotas, a Tucson police chief was criticized for an overt one-ticket-a-day policy. After he changed it to a one-contact-a-day requirement,[56] Republicans led a push for an anti-quota bill. Though the Fraternal Order of Police supported the bill, Governor Doug Ducey ultimately vetoed it.[57] As a result, police in Arizona remain free to use contacts to fulfill quota requirements.

South Carolina, which does have a statutory prohibition,[58] highlights the importance of contacts in police quotas. The Santee Police Department, situated along the well-traveled Interstate 95, came under scrutiny in 2019 after a memo demanding "a heavy increase" in traffic stops surfaced.[59] Lieutenant Riley Null authored the memo,

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[53] W. VA. LEGIS. AUDITOR, PERFORMANCE EVALUATION & RSCH. DIV., LEGISLATIVE PERFORMANCE REVIEW–WEST VIRGINIA STATE POLICE: SURVEY COMMENTS 46, 52, 54 (2008). The auditor asked: "Does the WVSP require each Trooper to issue a specified number of traffic citations or warning citations on a monthly basis?" Some of the responses included: "No specific #, but we have to show results. . . . No specific number is given, but 'numbers' are strongly emphasized. . . . There is no specific number but if you don't have contacts they reprimand you. . . . No specific #, but get bad [employee performance appraisals] or verbally reprimand [sic] for not having a considerable amount of contacts." *Id.* at 43–54.

[54] *See infra* notes 194–95.

[55] *See* Ferguson Report, *supra* note 17.

[56] Howard Fischer, *Arizona Bill Would Outlaw Police Traffic Ticket Quotas*, TUSCON.COM (Jan. 23, 2015), https://tucson.com/news/local/crime/arizona-bill-would-outlaw-police-traffic-ticket-quotas/article_d6bf8125-aec6-5e2e-ad0d-4ab16b181d4c.html.

[57] Ducey argued that "in its current form, I worry that police chiefs and local entities will be prevented from objectively gauging performance in their departments—a concern for officers themselves, the public and overall public safety." Matthew Hendley, *Ducey Vetoes Ban on Police Ticket Quotas*, PHX. NEW TIMES (Apr. 2, 2015, 5:57 AM), https://www.phoenixnewtimes.com/news/ducey-vetoes-ban-on-police-ticket-quotas-6661896.

[58] *See* S.C. CODE ANN. § 23-1-245 (West, Westlaw through 2020 Sess.).

[59] Michael Majchrowicz, *Internal Memo Suggests SC Police Department Violated Law Banning Ticket Quotas*, POST & COURIER (May 16, 2019), https://

sent it to patrol officers, and called for increased "contacts" with motorists.[60] Null threatened, "if activity is not increased, you will be required to have your body cameras recording during your entire shift to try and determine what activity is consuming your time."[61] Because the South Carolina statute makes an exception for points of contact,[62] the memo is likely legal. This is why it is important to offer the definitional landscape of quotas before delving into the statutory prohibitions: many of the statutes that prohibit quotas do not cover the full range of police activity that could be considered a quota.

*4. Incentives/Adverse Employment Actions*

Incentives and adverse employment decisions loom in the background of police quotas. Police departments have offered overtime, barbeque, pizza, gift cards, car wash coupons, and trophies to officers who meet quotas.[63] Failure to meet quotas can result in adverse employment actions, including denial of days off, transfers, undesirable assignments, and, of course, termination.[64] Police leadership can communicate the threat of an adverse employment action to an officer in an attempt to make them comply with a quota. In the cash-strapped city of Gretna, Louisiana, situated across the Mississippi River from New Orleans, threats of adverse employment decisions were rampant. In a recorded conversation with a patrolman, Lieutenant J.R. Rogers

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www.postandcourier.com/news/internal-memo-suggests-sc-police-department-violated-law-banning-ticket-quotas/article_aa02a4d6-77f2-11e9-8a32-b75a8475adde.html.

[60] *Id.*

[61] *Id.*

[62] *See* § 23-1-245 (defining "points of contact" as a "law enforcement officer's interaction with citizens and businesses within their jurisdictions and the law enforcement officer's involvement in community-oriented initiatives" and allowing for evaluations based on this category).

[63] Randy Travis, *Douglasville Cops Offered BBQ if They Wrote Enough Traffic Tickets*, FOX 5 ATLANTA (Mar. 10, 2020), https://www.fox5atlanta.com/news/douglasville-cops-offered-bbq-if-they-wrote-enough-traffic-tickets (barbeque); Daniela Altimari & John Lender, *Police Commissioner Says 'Pizza Memo' Was Not Ticket Quota*, HARTFORD COURANT (Apr. 2, 2012), https://www.courant.com/news/connecticut/hc-xpm-2012-04-02-hc-pizza-tickets-report-0403-20120402-story.html (pizza); Justin George, *Metro Transit Police Held a Competition to Encourage Arrests and Other Enforcement*, WASH. POST (Feb. 20, 2020, 7:02 PM), https://www.washingtonpost.com/local/trafficandcommuting/metro-transit-police-held-a-competition-to-encourage-arrests-and-other-enforcement/2020/02/12/02146d84-4dd7-11ea-9b5c-eac5b16dafaa_story.html (gift cards); Debbie Dujanovic, *Emails Reveal Incentives Behind Cottonwood Police Issuing Tickets*, KSL BROAD. (Oct. 24, 2013, 11:01 PM), https://www.ksl.com/article/27376993/emails-reveal-incentives-behind-cottonwood-police-issuing-tickets (carwash coupons and gift cards); Jack Douglas Jr. and Jason Allen, *One North Texas Officer Says Ticket Quotas Do Exist. . .And It May Be a Ticket to a Trophy*, CBS DFW (May 20, 2013, 10:23 PM), https://dfw.cbslocal.com/2013/05/20/one-north-texas-officer-says-ticket-quotas-do-existand-it-may-be-a-ticket-to-a-trophy (trophies and letters of appreciation).

[64] Cook, *supra* note 47.

insisted, "[s]omebody has got to go to jail every 12 hours," and threatened termination if the subordinate failed to comply.[65] Another officer testified that officers were told the city would stop paying for their insurance and contribute less to their retirement fund if they did not increase their arrests and citations.[66] The tethering of quota compliance to job security was so blatant that one officer gave a sergeant who was recently passed over for a promotion "a gift of knee pads, vaseline [sic], and ink pen refills—the implication being that the only way he'd be able to get that promotion was to either write up more of his patrolmen for not meeting the quota or perform sexual favors."[67]

Understanding these four features of quota-based policing—the level of formality, the nature of the numerical requirement, the enforcement activity demanded, and the potential employment actions—is important for a few reasons. First, the scholarly literature has yet to offer a robust description of quotas that captures the different permutations of the practice. Second, statutory prohibitions fall short of capturing the full scope of police activities that constitute quotas, which partially explains why quotas still exist in places that have enacted rules proscribing the practice. Third, these categories highlight gray areas in a non-transparent culture of policing. The strongest version of a quota would be a memorialized demand that police arrest a specific amount of people or face termination. A less detectable iteration might involve an informal communication to an officer to "increase their activity" with no threat of adverse employment outcome.[68] Such conduct would be permissible under some statutes and prohibited in others. Therefore, having a definitional grasp of these features is integral to understanding the following discussion about statutory prohibitions.

### *B. Statutory Landscape*

This subsection briefly describes the politics that animated some of the legislative prohibitions on quotas. Some of these statutes are of late-twentieth-century vintage and developed against the backdrop of police professionalization. These early anti-quota laws were driven by interests in police work conditions, public safety, and fair policing.

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[65] Michael Isaac Stein, *Police Lawsuits Provide an Inside View of Cash Register Justice in Louisiana*, SCALAWAG (Nov. 5, 2018), https://www.scalawagmagazine.org/2018/11/louisiana-cash-register-justice.

[66] *Id.*

[67] *Id.*

[68] *See, e.g.*, CRIME + PUNISHMENT (Hulu 2018) (describing a conversation in which an NYPD lieutenant tells an officer that he needs to "catch up with everybody" in terms of numbers of arrests).

These issues, along with concerns about racial justice, have continued to inspire more recent statutes. After explaining this history, this subsection categorizes the various anti-quota statutes.

*1. A Brief History*

The legislative history of quota prohibitions is scattered because, in many states, legislators passed these laws without fanfare. However, a close inspection can impose some coherence and highlight themes of public safety, police conditions, and police corruption. Noteworthy legislative activity surfaced in the 1970s. Black Democratic Assemblyman John Miller ushered California's bill in 1975.[69] Miller, who has been described as a "progressive independent in local politics," was politically shrewd and couched his support for quota bans in inclusive rhetoric.[70] The Howard University-trained lawyer—whose district included the racially and socio-economically diverse cities of Oakland and Berkeley—voiced a simultaneous concern for police officers and for the public. Describing quotas as "unfair, undemocratic, and unjust," Miller was troubled by the idea that failure to meet quotas could lead to an officer's demotion.[71] At the same time, Miller expressed concern about "the average California driver" who would be unbelieved by a "rubber stamp traffic court system which finds 90 percent of those cited guilty."[72] Finally, Miller highlighted due process issues and presaged the problems the Department of Justice would find forty years later in Ferguson when he stated: "The spectacle of cities gaining revenue for the conviction of citizens, and judges creating revenue by making criminals out of those brought before them . . . goes against our historical concepts of justice and fair play."[73] In many ways, California's statute was motivated by multi-constituent concerns that remain applicable today.

New York passed its bill in 1978, and though police and the public may have been beneficiaries, the statute was a response to outright police corruption.[74] The Commission to Investigate Alleged Police

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[69] *See Measure to Outlaw CHP's Ticket Quotas*, BERKELEY GAZETTE, July 22, 1975, at 1 (describing Miller's role in helping pass California's anti-quota law).

[70] David Mundstock, *Chapter 10 – The June 1976 Campaign and the New Slate Politics*, BERKELEY CITIZENS ACTION, https://berkeleycitizensaction.org/?page_id=397 (last visited Dec. 28, 2020).

[71] *See Measure to Outlaw CHP's Ticket Quotas*, *supra* note 69, at 1.

[72] *Id.*

[73] *Id.*; *see* Ferguson Report, *supra* note 17, at 2 ("This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community.").

[74] *See* Bronstein, *supra* note 21, at 544.

Corruption, or the Knapp Commission (led by United States District Court Judge Percy Knapp), produced one of the earliest and most extensive insights into the use of quotas in modern urban policing.[75] The Commission found that "informal arrest quotas" were "an inducement to a particular kind of corruption," most specifically, "the arrest of individuals not actually apprehended in the commission of the charged crime."[76] Testimony to the Commission described "a pattern of requiring a quota of four felony arrests per month."[77] The informal policy led to a practice of "flaking," which is when police plant drugs on suspects.[78] The longstanding, sexist practice of arresting sex workers and not their procurers also featured prominently in New York's quota-based culture. "Plainclothesmen assigned to prostitution details were faced with the necessity of producing a stipulated number of arrests a night and, in order to do so, often arrested persons they considered to be 'obvious' prostitutes, without obtaining sufficient legal evidence."[79]

Finally, the Commission unearthed widespread collusion between police and numbers runners, particularly in "ghetto neighborhoods" where investigators discovered "numerous bookmaking operations and some high-stakes, organized card and dice games."[80] These operations were brazenly public and payoffs to police ensured that these activities would go unpunished, "except for token arrests made to give an appearance of activity."[81] The report's description, which reveals the intricacy of corruption and its relationship to quotas, is worth quoting at length:

> Most often, when plainclothesmen needed a token arrest to meet arrest quotas or to give the appearance of activity, they would tell the operator of a spot and arrange a time and place for the arrest. The operator would then select someone to take the arrest, who was usually either one of his employees who had a relatively clean arrest record or an addict who was paid for his trouble. Whoever took the arrest would put a handful of bogus policy slips in his pocket and meet the plainclothesman at the designated time and place, where, often as not, he would get into their car without even waiting to be asked.[82]

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[75] COMM'N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE CITY'S ANTI-CORRUPTION PROCEDURES, COMM'N REP. 28 (1972).

[76] *Id.* at 28.

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] *Id.* at 71.

[81] *Id.*

[82] *Id.* at 83.

Whereas work conditions and the unfair doling out of tickets helped generate the enactment of the California statute, in New York it was the excesses of police culture and corruption that necessitated statutory prohibitions on quotas. In the ensuing decades, many states would pass laws that drew on one or more of these rationales.

Concerns about the work environment of police inspired the enactment of a few statutes. Democratic State Representative Perry Bullard introduced Michigan's statute in 1988 after speaking with police officers who described how the pressure to comply with quotas diminished their ability to fight crime.[83] During testimony for the bill, Jack Brown, executive director of the Fraternal Order of Police, lamented, "One of the most disgusting things we have as police officers is these quotas."[84] Wisconsin, led by Republican State Assemblyman DuWayne Johnsrud, passed its bill more than a decade later in 1998.[85] Before the bill's passage, Johnsrud said, "[a]ny time an officer has to work under a quota, he has to make decisions with a hammer hanging over his head."[86] Reflecting on the bill fifteen years after its passage, Johnsrud's rationale was the same. He explained that the bill came at the wishes of the State Patrol Troopers Union, which was concerned that officers were writing tickets at the expense of other safety-related work.[87] In Utah, Republican State Senator Howard Stephenson helped the state pass its bill in 2018.[88] Stephenson noted his opposition to police operating as revenue generators and claimed, "I don't believe policemen should be looking to meet a quota on bad behavior. What if there isn't enough bad behavior? Do you just have to make it up?"[89] The various statutes, passed in states spanning the east coast to the west coast, demonstrate the public safety-interested, police officer-protecting nature of quota prohibitions.

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[83] *See* Jim Mitzfield, *Ticket Quotas Cost Undeserving Drivers: Police*, S. BEND TRIB., Sept. 1, 1987, at B2; MICH. COMP. LAWS ANN. § 257.750 (West, Westlaw through P.A. 2020, No. 256 of 2020 Reg. Sess.).

[84] Mitzfield, *supra* note 83.

[85] *Police Banned from Using Speeding Ticket Quotas*, J. TIMES (Mar. 25, 1998), https://journaltimes.com/news/national/police-banned-from-using-speeding-ticket-quotas/article_a6faa127-90da-566f-a702-d46300ecf88f.html.

[86] Reid Magney, *Officials Say Standards Are Needed for Police*, LA CROSSE TRIBUNE, Jan. 8, 1998, at A6.

[87] Adam Schrager, *Legislators: State Patrol Policy Lists Quota, is 'Against the Law*,' CHANNEL3000 (Dec. 28, 2018, 1:32 AM), https://www.channel3000.com/legislators-state-patrol-policy-lists-quota-is-against-the-law.

[88] *See* Ben Winslow, *Utah Could Soon Ban Police Quotas in Traffic Stops*, FOX 13 (Feb. 5, 2018, 11:58 PM), https://www.fox13now.com/2018/02/05/utah-could-soon-ban-police-quotas-in-traffic-stops.

[89] *Id.*

Racial controversy has also inspired some states' prohibitions on police quotas. After the killing of Michael Brown exposed Ferguson's police practices, then-state congressman and future Republican Attorney General Eric Schmitt shepherded Missouri's legislation. Schmitt said that he authored the bill to "ensure that our citizens wouldn't simply be used as ATMs to fill municipal government coffers."[90] The police killing of Walter Scott, an unarmed Black motorist, likely led to the enactment of South Carolina's statute. After thirty-three-year-old officer Michael Slager stopped fifty-year-old Scott for a broken taillight, Scott fled, and Slager shot him in the back.[91] Slager claimed that he struggled with Scott over his taser and shot him out of fear.[92] Video evidence taken by a bystander later revealed that Scott was seventeen feet away when the officer shot him and that Slager had dropped his taser near him in "an attempt to plant evidence and skew the investigation."[93] Justin Bamberg, a civil rights attorney who represented the Scott family and serves as a Democratic Representative in the South Carolina General Assembly, subsequently authored the bill.[94] After Tennessee passed its quota bill in June 2020, Democratic Representative Rick Staples noted that quotas lead to Black people being frisked by police officers, and said that the "legislation will limit unnecessary contact between the two."[95] The existence of bipartisan and multi-constituent opposition to quotas is apparent from the widespread enactment of these statutory prohibitions.

### 2. *Types of Quota Prohibitions*

This subsection details the different types of anti-quota laws. The varying types of legislation make straightforward generalizations

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[90] *Missouri's Attorney General Sues City of Marshfield for Illegal Traffic Ticket Quota Scheme*, KY3 (Dec. 9, 2019, 4:06 PM), https://www.ky3.com/content/news/Missouris-attorney-general-sues-city-of-Marshfield-for-illegal-traffic-ticket-quota-scheme-565986731.html.

[91] *See* Alan Blinder, *Michael Slager, Officer in Walter Scott Shooting, Gets 20-Year Sentence*, N.Y. TIMES (Dec. 7, 2017), https://www.nytimes.com/2017/12/07/us/michael-slager-sentence-walter-scott.html.

[92] *Id.*

[93] *Id.*

[94] Grace Beahm, *Haley Signs Bill Banning Law Enforcement Ticket Quotas*, POST & COURIER (June 9, 2016), https://www.postandcourier.com/politics/haley-signs-bill-banning-law-enforcement-ticket-quotas/article_7449a3c5-b4ff-509f-b716-7bd7b72a38c7.html (reporting on Bamberg's representation of the Scott family and his sponsorship of the bill).

[95] Tyler Arnold, *Criminal Penalties for Issuing Police Ticket Quotas Passes Tennessee House*, CENTER SQUARE (June 11, 2020), https://www.thecentersquare.com/tennessee/criminal-penalties-for-issuing-police-ticket-quotas-passes-tennessee-house/article_eb5a2f34-ac0e-11ea-b5cc-6fd6b8293d42.html.

tricky. Indeed, the difficulty of offering a general framework might help explain the scholarly gap on police quotas. Some of these laws are either poorly drafted or cover a small amount of activity. Consider two examples. Florida's statute simply states: "a traffic enforcement agency may not establish a traffic citation quota."[96] This prohibition does not define what a quota is or whether it has to be numerically specific in order to fall under the scope of the statute. Such interpretative tasks are left to courts, assuming that allegations of quotas get that far.

Utah's statute, passed in 2018, is a bit more specific. It defines quotas as "any requirement or minimum standard regarding the *number or percentage* of citations or arrests."[97] But this provision still does not specify whether the prohibited "requirement" or "standard," must be formal.

The shortcomings of Utah and Florida's statutes are representative of the many limitations of anti-quota laws. Most statutes only cover some aspects of quota-based policing, and each statute is different. What one state considers an illegal quota, another state may find permissible. Most basically, anti-quota laws vary on how formal or numerically specific quotas must be to fall under the statute. All statutes prohibit departments from requiring officers to issue a certain amount of citations or traffic violations. Some laws go further and include arrests, while others cover precursory law enforcement activities such as stops and warnings. Most focus on whether the failure to meet a quota leads to some kind of employment action.

*Formality*: As Figure 1 demonstrates, state statutes vary in their language and their characterization of quotas as formal and/or informal. "Direct" and "indirect" are also words used to capture formality. For example, Nebraska only prohibits law enforcement from "directly" requiring an officer to meet a quota.[98] Informal pressure put on a police officer to improve their numbers is not covered. Pennsylvania's statutory language, by contrast, forbids any law enforcement agency from establishing or maintaining any policy "directly or indirectly."[99] Other jurisdictions, like New Jersey, are silent on which communicative mechanisms are forbidden and state that law enforcement may not "establish any quota for arrests or cita-

[96] FLA. STAT. ANN. § 316.640 (West, Westlaw through Ch. 184 of 2020 2d Reg. Sess.).

[97] UTAH CODE ANN. § 77-7-27 (West, Westlaw through 2020 6th Spec. Sess.) (emphasis added).

[98] NEB. REV. STAT. ANN. § 48-235 (West, Westlaw through end of 2020 2d Reg. Sess.).

[99] 71 PA. STAT. AND CONS. STAT. ANN. § 2001 (West 2020).

tions."[100] This might include direct or indirect quotas, or encapsulate only formal quotas. Since many of these statutes are under-litigated, the available language is crucial for parties seeking to bring a claim that an agency violated the prohibition.

FIGURE 1. FORMALITY AND QUOTA STATUTES

| **Silent** | **Formality** | **Informality** |
|---|---|---|
| No language on level of formality (e.g., New Jersey) | Prohibits only direct or formal impositions of quotas (e.g., Nebraska) | Prohibits informal/indirect quota requirements and formal and direct requirements (e.g., Pennsylvania) |

*Quantification*: Numerical requirements are also present in some state prohibitions. Michigan's statute is typical in that it bars agencies from requiring a "predetermined or specified number of citations."[101] Some states, like Florida, do not make any reference to numbers, which could simply mean that a number is implied in the definition of quota but could also leave room for the use of averages, which some departments use to circumvent quota prohibitions.[102]

FIGURE 2. QUANTIFICATION AND QUOTA STATUTES

| **Generic** | **Numerically Specific** |
|---|---|
| (Prohibits implementation of quotas; no statutory definition of amount; e.g., Florida) | (Prohibits requiring a specific average or number of citations/violations or arrests; e.g., New York) |

*Law Enforcement Activity*: All statutes specify which law enforcement activities cannot be subject to a quota. Seventeen states prohibit

[100] N.J. STAT. ANN. § 40A:14-181.2 (West, Westlaw through L.2020, c.136 and J.R. No. 2).

[101] MICH. COMP. LAWS ANN. § 257.750 (West, Westlaw through P.A. 2020, No. 256 of 2020 Reg. Sess.).

[102] *See* Sparrow, *supra* note 34.

quotas for citations and traffic violations.[103] Nine states include citations, traffic violations, *and* arrests.[104] Other states are overinclusive or underinclusive when it comes to activity outside of citations, traffic violations, and arrests. Two states, Wisconsin and Rhode Island, include warning notices and investigative stops, respectively.[105] These states seem to recognize that warnings and stops can lead to the kind of law enforcement activity that quota legislation is designed to cover, and accordingly include these preludes into their statutory schemes. Some jurisdictions take the opposite approach. Missouri excludes warnings from its statute,[106] whereas South Carolina and Illinois make *exceptions* for "points of contact."[107] In these three jurisdictions, such precursory activity does not fall under the state statute. All other states are silent on whether these kinds of law enforcement activities are covered by their statutes. Thus, read in whole, American statutes that prohibit quotas focus primarily on citations, traffic violations, and arrests, leaving significant room for penumbral pursuits that are related but do not fall into those specific law enforcement activities.

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[103] These states include Connecticut, Illinois, Florida, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin.

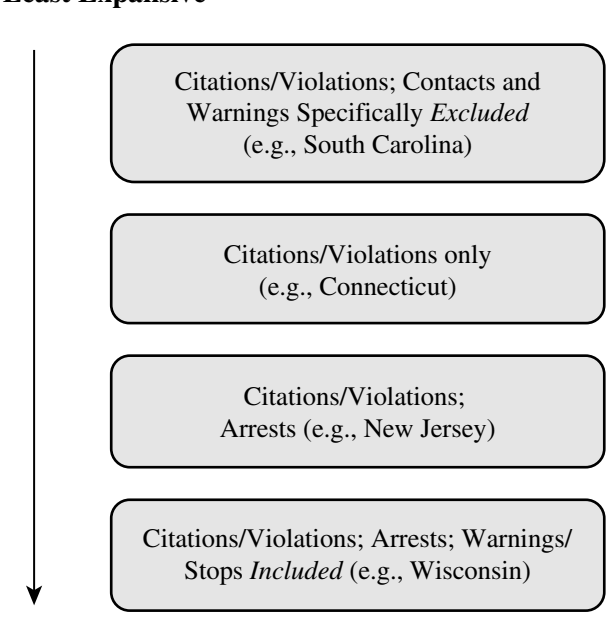
[104] Arkansas, California, Louisiana, Maryland, New Jersey, New York, North Carolina, Rhode Island, and Utah all include citations, tickets, and arrests.

[105] WIS. STAT. ANN. § 349.025 (West, Westlaw through 2019 Act 186); 31 R.I. GEN. LAWS ANN. § 31-27-25 (West, Westlaw through ch. 79 of 2020 2d Reg. Sess.).

[106] MO. ANN. STAT. § 304.125 (West, Westlaw through 2020 2d Reg. Sess.) ("This section shall not apply to the issuance of warning citations.").

[107] S.C. CODE ANN. § 23-1-245 (West, Westlaw through 2020 Sess.); 20 ILL. COMP. STAT. ANN. 2610/24 (West, Westlaw through P.A. 101-651).

FIGURE 3. LAW ENFORCEMENT ACTIVITY AND QUOTA STATUTES




*Employment Actions*: A few states use specific language prohibiting the use of quotas for incentives and adverse employment actions. Texas, for example, prohibits the use of quotas to "*evaluate*, *promote*, compensate, or discipline" police officers.[108] Some states focus only on adverse employment actions. New York's ban, which has been subject to the most litigation, prohibits "a reassignment, a scheduling change, an adverse evaluation, a constructive dismissal, the denial of a promotion, or the denial of overtime, based in whole or in part on such employee's failure to meet a quota."[109] By specifying the range of employment actions, these statutes supply potential plaintiffs (typically police officers) with the statutory language to bring claims against departments that implement quotas. States like Arkansas, by contrast, are silent on this issue. One could interpret this silence to mean that employment action is impliedly forbidden by the statute or as an intentional omission by the legislature.

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[108] TEX. TRANSP. CODE ANN. § 720.002 (West, Westlaw through end of 2019 Reg. Sess.) (emphasis added).

[109] N.Y. LAB. LAW § 215-a (McKinney, Westlaw through L.2019, ch. 758 and L.2020, chs. 1 to 387).

FIGURE 4. EMPLOYMENT ACTIONS AND QUOTA STATUTES

| **Silent** (No language on Type of Employment Action; e.g., Arkansas) | **Adverse Employment Action Only** (e.g., New York) | **Employment Benefits + Adverse Action** (e.g., Texas) |
|---|---|---|

*Additional Features*: Two statutes have unique features that are worth noting. First, Illinois has a provision that attempts to address potential funding complications that may arise from prohibitions.[110] Its statute states that the prohibition on quotas "shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs."[111] Second, Tennessee amended its prohibition in July 2020 and made violation of the statute a Class B misdemeanor subject to a fine.[112] Since it is a new amendment, time will tell if this will successfully deter police brass attempting to implement quotas. The shortcomings of each of these different types of state quota prohibitions often interface with other legal obstacles and shape litigation outcomes. That will be the topic of the next Part.

## II
## POLICE QUOTA LITIGATION

The national patchwork of quota-based statutes has produced a variegated body of caselaw. Police officers are the typical plaintiffs that bring these cases to court. They usually argue that their resistance to or inability to meet a quota led to some adverse employment action. Alternatively, officers claim that they endured retaliation for speaking out about quotas—a claim that usually involves First Amendment issues.

People subject to criminal law enforcement are also common parties in police quota litigation.[113] These individuals fall into two catego-

110 65 ILL. COMP. STAT. ANN. 5/11-1-12 (West, Westlaw through P.A. 101-651).

111 *Id.*

112 Act of July 15, 2020, ch. 801, 2020 Tenn. Pub Acts, https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf.

113 There are a handful of cases where governments have brought charges against public officials who implemented or conformed to quotas, but these are rare. *See* Becker-Ross v. State, 595 S.W.3d 261 (Tex. App. 2020); Gerwer v. Kelly, 980 N.Y.S.2d 275 (Sup. Ct. 2013).

ries. They can be criminal defendants who argue that their contact with law enforcement was predicated on an officer's compliance with an illegal quota system. In essence, these parties raise the practice of quota-based policing as an affirmative defense. In instances where alleged quota-based contact resulted in dropped charges or the termination of the criminal action, parties have also brought federal civil rights lawsuits under 42 U.S.C. § 1983.[114] In these cases, which sometimes emerge from jurisdictions without anti-quota laws, plaintiffs argue that law enforcement's adherence to police quotas led to a violation of their civil rights.

Whether the party challenging the quota is an officer or a civilian, there are a range of socio-legal, doctrinal, and evidentiary hurdles that litigants must overcome before courts will meaningfully engage with their claims. This subsection briefly describes these hurdles for both groups, then describes the varying outcomes of these cases.

### *A. Police Speech and the Blue Code*

Police officers are the group most likely and best positioned to litigate challenges to quotas, but the "code of silence," which prohibits officers from reporting misconduct, serves as a barrier.[115] This code[116]—which commentators also refer to as "the blue wall of

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[114] 42 U.S.C. § 1983.

[115] *See, e.g.*, Isidoro Rodriguez, *The Plight of the Police Whistleblower*, CRIME REPORT (June 18, 2020), https://thecrimereport.org/2020/06/18/the-plight-of-the-police-whistleblower (quoting Seth Stoughton, law professor and former police officer, saying "[t]here is tremendous pressure in policing, a cultural pressure, to not expose fellow officers to either professional or physical threats").

[116] *See* SANJA KUTNJAK IVKOVIC, FALLEN BLUE KNIGHTS: CONTROLLING POLICE CORRUPTION 20 (2005) (describing the code as "the informal prohibition within police culture of reporting misconduct by fellow officers—binds police together"); *see also* Bret D. Asbury, *Anti-Snitching Norms and Community Loyalty*, 89 OR. L. REV. 1257, 1285–92 (2011) (describing the code as an anti-snitching norm rooted in ideas about group loyalty and family); David Rudovsky, *Police Abuse: Can the Violence Be Contained?*, 27 HARV. C.R.-C.L. L. REV. 465, 487 (1992) ("The code of silence does more than prevent testimony. It mandates that no officer report another for misconduct, that supervisors not discipline officers for abuse, that wrongdoing be covered up, and that any investigation or legal action into police misconduct be deflected and discouraged."). Courts have also recognized the code in § 1983 actions. *See* Gabriel J. Chin & Scott C. Wells, *The "Blue Wall of Silence" as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 239, n.16 (1998) (listing cases). *See generally* Myriam E. Gilles, *Breaking the Code of Silence: Rediscovering "Custom" in Section 1983 Municipal Liability*, 80 B.U. L. REV. 17, 18 (2000) (exploring the police "code of silence" as an unconstitutional police practice under § 1983). In the context of quotas, the blue code could be understood in two ways. First, it could be understood as a prohibition against one officer revealing another officer's compliance with an illegal quota (a form of misconduct) to a perceived outsider (i.e. the public, the media). Alternatively, it could apply to an officer who reveals that law enforcement leadership is enforcing quotas. At its core, the code is about a brotherhood in which some police officers might not include management. Put another way, there is an

silence," "blue cocoon," "blue shield," or "blue curtain"[117]—has been a problem in American policing for almost a century.[118] One police misconduct attorney explains how a breach of this code can be consequential: "while police officers may feel that a fellow officer has acted wrongfully, they fear that they will lose their job, or be subject to ridicule, ostracization, and physical reprisals from their comrades if the truth is told."[119] The same applies to speaking out about quotas. The case of Adrian Schoolcraft is telling. Schoolcraft worked for the NYPD and secretly recorded superiors discussing illegal quotas or, as some officials described it, "paying the rent."[120] Three weeks after he made misconduct allegations, a dozen officers, led by a deputy chief, went to his apartment.[121] A tape recording of the event revealed that the deputy chief Mike Marino, who has been described as a devotee of NYPD's numbers-driven policing,[122] warned Schoolcraft, "they are going to treat you like an EDP [emotionally disturbed person] . . . . Now, you have a choice. You get up like a man and put your shoes on and walk into that bus, or they're going to treat you as an EDP and

argument that the blue code is about protecting not police leadership, but rank and file. But actual instances involving police officers revealing the existence of quotas suggest that leadership is considered part of the code. *See generally* Radley Balko, Opinion, *The Blue Wall: Stronger than Ever*, WASH. POST (Sept. 4, 2015), https://www.washingtonpost.com/news/the-watch/wp/2015/09/04/the-blue-wall-stronger-than-ever (describing instances of police officers who have revealed the existence of quotas and allege retaliation from their peers and leadership).

117 *See* Chin & Wells, *supra* note 116, at 237 n.15 (describing the different terms for the code).

118 *See* Craig B. Futterman, Chaclyn Hunt & Jamie Kalven, *Youth/Police Encounters on Chicago's South Side: Acknowledging the Realities*, 2016 U. CHI. LEGAL F. 125, 182 (noting that "over the last eighty-five years, at least nine different commissions around the nation have identified the police code of silence as a serious problem that prevents accountability" and listing all of the reports).

119 G. Flint Taylor, *A Litigator's View of Discovery and Proof in Police Misconduct Policy and Practice Cases*, 48 DEPAUL L. REV. 747, 758 (1999); *see also* Aziz Z. Huq & Richard H. McAdams, *Litigating the Blue Wall of Silence: How to Challenge the Police Privilege to Delay Investigation*, 2016 U. CHI. LEGAL F. 213, 247–48 ("Scholarship on policing amply shows that police officers enforce the code of silence with social ostracism, refusals to answer calls for backup, denials of promotion, reassignments to less desirable postings, and threats of violence.").

120 Graham Rayman, *The NYPD Tapes: Inside Bed-Stuy's 81st Precinct*, VILLAGE VOICE (May 4, 2010), https://www.villagevoice.com/2010/05/04/the-nypd-tapes-inside-bed-stuys-81st-precinct.

121 *See* Graham Rayman, *NYPD Tapes Update: Queens DA Richard Brown's Report on Whistleblower Cop Raises More Questions than It Answers*, VILLAGE VOICE (Dec. 13, 2012), https://www.villagevoice.com/2012/12/13/nypd-tapes-update-queens-da-richard-browns-report-on-whistleblower-cop-raises-more-questions-than-it-answers.

122 *See* Graham Rayman, *Deputy Chief Michael Marino in Stop-and-Frisk Trial: 'Do Your Job or Suffer the Consequences*,' VILLAGE VOICE (Mar. 25, 2013), https://www.villagevoice.com/2013/03/25/deputy-chief-michael-marino-in-stop-and-frisk-trial-do-your-job-or-suffer-the-consequences.

that means handcuffs."[123] Schoolcraft was subjected to the latter and forcibly committed to a psychiatric ward.[124] After six days in the ward, he was discharged and suspended and continued to receive visits from police officers.[125] Ultimately, he made the tapes public and sued the NYPD for retaliation.[126] The NYPD settled.[127] Since the incident, the City has not "released one report, document or even scrap of paper which explains the NYPD's handling of the episode or details the department's conclusions about Schoolcraft's allegations."[128] While this is one of the more spectacular examples of what happens when the code of silence is breached, it highlights its retaliatory nature.[129] As some of the cases discussed in this Article show, the threat of retaliation can determine whether quota cases make it to courts and, if they do, the posture in which they enter the legal system.

The code of silence bleeds into First Amendment issues involving police speech. The Supreme Court in *Garcetti v. Ceballos* ruled that public employees who speak pursuant to their job duties have no First Amendment protection from retaliation for such speech.[130] If an officer speaks about a quota in their official capacity, then a First Amendment retaliation claim cannot succeed. The only way such a claim could prevail is if the officer demonstrates that she spoke as a citizen and not as an employee. Post-*Garcetti*, federal district and appeals courts have rejected retaliation claims brought by police officers who argued that they were subject to an adverse employment action due to their complaints about police quotas.[131] Considering the

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123 Graham Rayman, *NYPD Tapes 4: The WhistleBlower, Adrian Schoolcraft*, VILLAGE VOICE (June 15, 2010), https://www.villagevoice.com/2010/06/15/nypd-tapes-4-the-whistleblower-adrian-schoolcraft.

124 *Id.*

125 *Id.*

126 Goodman, *supra* note 26.

127 *Id.*

128 Graham Rayman, *Adrian Schoolcraft: The Other NYPD Scandal in the Room*, VILLAGE VOICE (Apr. 20, 2011), https://www.villagevoice.com/2011/04/20/adrian-schoolcraft-the-other-nypd-scandal-in-the-room.

129 Roberta Ann Johnson, *Whistleblowing and the Police*, 3 RUTGERS J.L. & URB. POL'Y 74, 83 (2005) ("The threat of retaliation against whistleblowers has a chilling effect. The threat prevents officers from coming forward to expose corrupt and abusive practices and it prevents serious wrongdoing from being addressed in-house.").

130 547 U.S. 410, 424 (2006).

131 *See, e.g.*, Taylor v. Pawlowski, 551 F. App'x 31, 31 (3d Cir. 2013) (ruling that officer's statements to his superiors about the illegality of a quota system for traffic stops were not protected speech under the First Amendment, and that he was acting as a public employee speaking pursuant to his duties); Cid v. Bd. of Cnty. Comm'rs, No. 18-4012, 2019 WL 161495, at *7 (D. Kan. Jan. 9, 2019) (rejecting a First Amendment retaliation claim brought by a terminated officer because he "directed his speech to his immediate supervisors and others in his chain of command—but no one outside that chain of command" and did not make a showing that his speech "involve[d] a matter of public concern and not merely a

inadequacy of whistleblower laws, which often fail to cover police officers and impose technical requirements, *Garcetti* presents a quagmire.[132] Officers concerned about quota-based policing in their departments can keep their objections in-house and follow typical grievance procedures. However, this process typically requires the grievant to inform a chain of command (e.g., their immediate supervisor, then chief of police, then the city manager).[133] The grievance process can subject the officer to the hazards of retaliation for breaking the code of silence, and under *Garcetti*, the officer may not be protected. The officer could also go public, as some have recently done,[134] but that option can be similarly, if not more, antagonizing to colleagues and lead to resignations that are difficult to remediate.[135] These social and legal constraints provide some insight into why statutes prohibiting quotas are infrequently litigated.

### *B. Evidentiary Challenges for Civilians*

Challenges to quota-based policing brought by civilians raise many of the evidentiary problems discussed in "access to justice" scholarship. This body of work describes how infidelity to discovery rules, strict pleading standards, and the judicial hostility to the enforcement of civil rights make courts inaccessible to civilians.[136] As a threshold matter, discovery disputes can preclude parties from demonstrating that quota-based policing exists. For example, in cases

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personal issue internal to the workplace"); Whitehead v. City of New York, 953 F. Supp. 2d 367, 375 (E.D.N.Y. 2012) ("[P]laintiff's refusal to comply with the quota policy is not protected by the First Amendment because he confined his opposition to and criticism of the quota policy within the NYPD and never attempted to communicate his complaints to the public."). *But see* Matthews v. City of New York, 779 F.3d 167, 176 (2d Cir. 2015) (finding that officer spoke as a citizen when he spoke to his commanding officers about its arrest policy).

132 Whistleblower laws sometimes lack statutory coverage for municipal and county employees (categories police officers often fall in) and have various technical requirements for coverage (e.g., mandated initial disclosure to supervisors for protection to attach). *See* Ann C. Hodges & Justin Pugh, *Crossing the Thin Blue Line: Protecting Law Enforcement Officers Who Blow the Whistle*, 52 U.C. DAVIS L. REV. ONLINE 1, 26–31 (2018).

133 *See* LARRY K. GAINES & JOHN L. WORRALL, POLICE ADMINISTRATION 344–45 (2012) (describing grievance procedures).

134 *See infra* note 330; *supra* notes 37, 44, 65, 120–29.

135 *See* Huq & McAdams, *supra* note 119, at 247–48 (suggesting that harassment that forces an officer to resign should be understood as a constructive discharge and noting "the well-known reality is that it remains difficult or impossible to prove constructive discharge in any individual case, given the code of silence").

136 *See* STEPHEN B. BURBANK & SEAN FARHANG, RIGHTS AND RETRENCHMENT: THE COUNTERREVOLUTION AGAINST FEDERAL LITIGATION (2017); ERWIN CHEMERINSKY, CLOSING THE COURTHOUSE DOOR: HOW YOUR CONSTITUTIONAL RIGHTS BECAME UNENFORCEABLE (2017); SARAH STASZAK, NO DAY IN COURT: ACCESS TO JUSTICE AND THE POLITICS OF JUDICIAL RETRENCHMENT (2015).

involving criminal defendants who were charged with driving while intoxicated and sought arrest data to prove the existence of police quotas, some courts have ruled that such information is not relevant or would not bear any material information.[137]

Some civil rights plaintiffs have unsuccessfully brought legal actions arguing that quota-satisfying officers violated their rights. For example, in *D.H. v. City of New York*, a group of women of color were arrested and charged with loitering for the purposes of prostitution.[138] They brought a § 1983 suit against the City of New York and their arresting officers. The plaintiffs challenged the constitutionality of the loitering statute and argued that they were discriminated against on the basis of their race, gender, and gender identity.[139] The plaintiffs also argued that the arrests were products of quota-based policing.[140] To support their claim, they relied on statistical evidence and a statement from a former police officer who noted that arrest quotas led cops to go after "black, . . . Hispanic, . . . [and] LGBT communit[ies]."[141] Notwithstanding this evidence, New York's anti-quota statute,[142] and the NYPD's documented struggles with quotas,[143] the court found their arguments unpersuasive. The court granted the defendants' motion to dismiss and ruled that the plaintiffs had failed to show that "one of *these* defendants needed to make these arrests to meet his or her performance goals and arrest quotas, assuming such goals and quotas existed."[144] By requiring this kind of evidence at the pleading stage, particularly in a jurisdiction that has

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137 *See, e.g.*, Mayes v. City of Oak Park, No. 05-CV-74386-DT, 2007 WL 9751967, at *1 (E.D. Mich. Sept. 28, 2007), *aff'd*, 285 F. App'x 261 (6th Cir. 2008) (ruling that the plaintiff, a former public safety officer who claimed his termination was based on race and disability discrimination, was not entitled to racial data on arrests and tickets in Oak Park because it was not relevant to his claim); Page v. State, 7 S.W.3d 202, 206 (Tex. App. 1999) (rejecting defendant's request for DWI task force information, which he argued was material and could be used to impeach the arresting officer since a DWI quota directive would have given the officer a motive to falsify his report); County of Nassau Police Dep't v. Judge, 654 N.Y.S.2d 174, 175 (App. Div. 1997) (ruling that motorist was not entitled to production of internal police directives and orders that allegedly established DWI quota system because the respondent did not demonstrate that any information would be relevant or exculpatory).

138 309 F. Supp. 3d 52, 63 (S.D.N.Y. 2018).

139 *Id.* at 64.

140 *Id.* at 76.

141 *Id.* at 75.

142 N.Y. LAB. LAW § 215-a (McKinney, Westlaw through L.2019, ch. 758 and L.2020, chs. 1 to 387).

143 *See* Bronstein, *supra* note 21 (arguing that the New York anti-quota statute has largely failed to rectify the negative practices of the NYPD).

144 *D.H.*, 309 F. Supp. 3d at 76 (emphasis added).

been the poster-child for police quotas, the court created a high bar for future civil rights plaintiffs seeking to challenge this practice.

Many of the same problems arise in federal cases out of jurisdictions that do not have quota legislation. Before Tennessee passed its legislation, a federal court in that state heard a case brought by Terry Wynn, a Black physician who was stopped by the police after speeding to a hospital to help deliver a patient's baby.[145] Despite the intervention of a hospital supervisor who came to the hospital parking lot to inform the arresting officer that Wynn was indeed a doctor, the officer prepared a criminal summons against Wynn for speeding, felony evading arrest, resisting arrest, and a host of other violations.[146] A local prosecutor dropped the charges.[147] Meanwhile, the officer was suspended for a month for what the police chief described as a failure of judgement.[148] Wynn brought a § 1983 suit, arguing that the officer and the City had violated her Fourth and Fourteenth Amendment rights.[149] She argued that the City of Pulaski had a quota that required law enforcement to obtain "10 'traffic or custodial arrests' per month as a work performance goal," citing the arresting officer's own testimony as evidence.[150] The court ruled that this testimony was not indicative of a "hard-and-fast policy of the department."[151] If it was a formal policy, the court added, "municipal liability cannot attach in the absence of showing some link between the quota and the allegedly false arrest of, and use of excessive force on, Dr. Wynn."[152] Ultimately, in the federal tribunals where non-officers bring their challenges to quotas, courts demand tight causal links between the alleged quota and the constitutional violation. These evidentiary demands, along with different statutory conceptions of quotas, have likely stunted the development of case law in this area.

### *C. Wins and Losses*

Challenges to quotas that get beyond these hurdles have had mixed success. This subsection describes the few wins that plaintiffs have achieved when litigating police quotas, as well as the many losses.

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145 Wynn v. City of Pulaski, No. 11-0025, 2013 WL 527154 (M.D. Tenn. Feb. 11, 2013).
146 *Id.* at *3.
147 *Id.*
148 *Id.*
149 *Id.*
150 *Id.* at *13.
151 *Id.*
152 *Id.*

Some criminal defendants have persuaded appellate tribunals that quotas governed their arrests and were not adequately considered by trial courts. In Pennsylvania, for example, various courts have interpreted the state's anti-quota law as creating an affirmative defense if defendants can prove a violation of the statute by a preponderance of the evidence.[153] In *Commonwealth v. Greene*, a Pennsylvania court reversed a speeding conviction after the defendant produced a memo from a sergeant to patrol supervisors imploring them to increase their citations from 168 to 450 a month and insisting that they "get the numbers up."[154] The court ruled that the defendant met his burden, and interpreted the memo as creating an impermissible quota.[155]

A Texas appeals court came to a similar conclusion, reversing the DWI conviction of a defendant who was precluded from cross-examining the arresting officer about a departmental quota for DWI arrests, even though the officer was the state's sole witness and had testified that a quota existed.[156] The appellate court ruled that the trial court had abused its discretion and deprived the appellant of his Sixth Amendment right to confrontation.[157] A cross-examination that revealed the existence of a DWI quota would also play a role in a Louisiana court's decision to vacate a conviction.[158]

Police officers who exposed the existence of quotas have also successfully brought retaliation claims against police departments. These decisions were not per se challenges to the alleged quota system, but they remain important because they contribute to the small body of litigation that addresses quotas, shed light on the existence of the practice, and demonstrate the stakes for police officers who complain about this kind of policing. Many of these challenges were First Amendment retaliation cases, decided before *Garcetti* ruled out employee claims of retaliation for things they said while on duty.[159] Other cases, decided before and after *Garcetti*, did not hinge on First Amendment claims, and involved officer complaints about quotas and

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153 *See, e.g.*, Woolston v. Cutting, 474 A.2d 698, 701 (Pa. 1984) (holding that in authoring the anti-quota statute, the legislature intended it to function as an affirmative defense rather than a civil cause of action).

154 Commonwealth v. Greene, 32 Pa. D. & C.3d 48, 52–53 (Ct. Com. Pl. 1984).

155 *Id.* at 53–54.

156 Alexander v. State, 949 S.W.2d 772, 773–74 (Tex. App. 1997).

157 *Id.* at 775. *But see* Hollier v. State, No. 14-99-01348-CR, 2001 WL 951014, at *7 (Tex. App. Aug. 23, 2001) (rejecting a similar claim because, unlike in *Alexander*, the appellant could not show that the arresting officer was operating under a quota at the time of arrest).

158 *See* State v. Sampia, 696 So. 2d 618, 620 (La. Ct. App. 1997).

159 *See, e.g.*, Begg v. Moffitt, 555 F. Supp. 1344, 1365 (N.D. Ill. 1983) (finding a violation under the First Amendment); Ruhlman v. Barger, 435 F. Supp. 447, 450 (W.D. Pa. 1976) (same).

police misconduct. Two are noteworthy. *Iglesias v. City of Hialeah*, the more modest and recent of the two, took place in a small city outside of Miami.[160] Juan Iglesias, an officer in the City's police department,[161] sent letters to the City's police chief and mayor protesting the enforcement of illegal ticket quotas.[162] Nevertheless, he received multiple disciplinary notices for not meeting traffic enforcement standards.[163] He used the state's whistleblower law to argue that the City had illegally retaliated against him for complaining about the quotas.[164] The trial court awarded him lost wages but precluded him from seeking noneconomic damages—a decision that the appellate court reversed.[165]

*Martinez v. Village of Mount Prospect* is the most noteworthy court victory involving a police challenge to a quota.[166] The case involved a Latinx police trainee, Martinez, who brought a national origin employment discrimination claim against the Village of Mount Prospect, a community outside of Chicago.[167] He argued that police leadership directed officers to target Latinx drivers to meet ticket quota requirements; to support his claim, he presented evidence highlighting the disproportionate number of traffic tickets given to Latinx drivers.[168] A federal district court entered an approximately $1.1 million settlement for Martinez[169] and enjoined the Village from "directing, suggesting, ordering or otherwise communicating that any police officer should focus, concentrate, target, profile, or otherwise modify law enforcement efforts in any way on the sole basis of the national origin of any person."[170] Finally, the presiding judge sent a letter, included in the opinion, to the Department of Justice.[171] The

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160 Iglesias v. City of Hialeah, No. 3D18-639, 2019 WL 3309040 (Fla. Dist. Ct. App. July 24, 2019).

161 *Id.* at *1.

162 *Id.*

163 *Id.*

164 *Id.*

165 *Id*. at *2. This dispute spawned a separate ongoing case involving Iglesias's sergeant, Paul DiPietro. In his testimony for Iglesias's case, DiPietro was reprimanded for failing to adequately discipline Iglesias, and then in Iglesias's civil suit, gave testimony that contradicted the City's position that there was no traffic quota. He argued that he was retaliated against by reassignment to a far location and then terminated. DiPietro brought his own claim into federal court, which the parties settled in 2020. *See* Joint Stipulation for Dismissal With Prejudice at 1, DiPietro v. City of Hialeah, No. 19-cv-23212 (S.D. Fla. Sept. 10, 2020), ECF No. 50.

166 92 F. Supp. 2d 780 (N.D. Ill. 2000).

167 *Id.* at 781.

168 *Id.*

169 *Id.*

170 *Id.* at 782.

171 *Id.*

letter highlighted the interface of the quota policy and racial profiling and encouraged the agency to investigate the Village for civil rights violations.[172]

*Martinez* represents one of the more significant rulings on police quotas, but when cases are decided on the merits, it is much more common for plaintiffs to lose. Judicial rebuffs come in a variety of forms. Sometimes courts, relying on *Garcetti*, rule that officer objections to police quotas do not constitute protected speech, which often ends the analysis.[173] Sometimes courts are unpersuaded by evidence that points to the existence of quotas.[174] Sometimes the claims are outright unpersuasive, as in *Gravitte v. N.C. Division of Motor Vehicles*,[175] where the Fourth Circuit rejected claims brought by a police officer and a police union who argued that North Carolina's quota policy violated officers' right to equal protection because the policy operated in some districts but not others.[176]

Two litigation losses are particularly instructive for thinking about quota-based policing in the future. Both cases, brought by police unions, reveal how departments and jurisdictions can work around statutory prohibitions. The first concerns Camden, New Jersey, which has been at the center of police reform for its drastic reboot of its police department.[177] In *Fraternal Order of Police, Lodge 1 v. City of Camden*, the Fraternal Order of Police challenged the City's implementation of a "directed patrol" program that required

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172 *Id.*

173 *See, e.g.*, Whitehead v. City of New York, 953 F. Supp. 2d 367, 375 (E.D.N.Y. 2012) (holding that the plaintiff officer's objections to the quota were not protected by the First Amendment because refusing to comply with the quota does not constitute expressive conduct).

174 *See, e.g.*, Statewide Univ. Police Ass'n v. Bd. of Trs. of Cal. State Univ., B290293, 2020 WL 2213040, at *5–6 (Cal. Ct. App. May 7, 2020) (finding no violation of the state's quota statute where personal evaluation "comment cards" offering feedback on the lack of parking enforcement citations were not punitive in nature); Oliverio v. Butler Univ., No. 15-cv-01630, 2017 WL 1650501, at *9 (S.D. Ind. May 2, 2017) (rejecting plaintiff's invocation of the respondent's quota requirement for parking tickets as not relevant because he was arrested for battery); Matarazzo v. Safir, 689 N.Y.S.2d 494, 495 (App. Div. 1999) (dismissing claim because petitioners gave no indication of how many tickets petitioners had to write and the only evidence offered was from two supervising officers from two different precincts who directed the individual petitioners to perform duties, during their meal breaks, that were likely to result in the issuance of tickets); Commonwealth v. McClellan, 45 Pa. D. & C.3d 627, 628 (C.P. Chester 1987) (rejecting defendant's affirmative quota defense because he only offered budget statements that showed projected revenues, which the court argued did not establish the existence of a quota system).

175 33 F. App'x 45, 47 (4th Cir. 2002).

176 The plaintiffs also raised relatively unpersuasive claims under the Due Process clause, the Privileges and Immunities clause, and the Fourth Amendment. *See id.* at 47, 49.

177 *See* Fussell, *supra* note 31.

police officers to "engage" people whether or not they were suspected of wrongdoing.[178] The directed patrol program consisted of "a structured 15–20 minute deployment into a targeted area to accomplish a specific patrol or crime reduction function."[179] The contacts were to be tracked and recorded, and officers on regular patrol were expected to perform a minimum of eighteen contacts.[180] According to plaintiffs, failure to comply with these numerical requirements was cause for disciplinary action.[181] The City argued that the program was not a quota because it required police-civilian interactions and not arrests or citations.[182] The Third Circuit relied on the text of the statute and, in a short analysis, agreed.[183] *Fraternal Order* is a paradigmatic example of how a police department can circumvent a statutory prohibition on quotas by focusing on precursory activity such as stops and contacts.

Another failed litigation challenge highlights the sophisticated ways through which police departments can subvert quota statutes. In *Phillipsburg Policemen's Benevolent Ass'n Local No. 56 v. Township of Phillipsburg*, a local police union challenged a township's "self-directed patrol index policy," which created a point system to evaluate police officers.[184] The index assigned different values to different kinds of arrests and citations:

- 4 Points - Narcotics arrests (4 points per subject arrested)
- 4 Points - Burglary and theft arrests
- 3 Points - Warrant arrests (1 subject, multiple warrants = 3 points)
- 2 Points - All moving motor vehicle summonses
- 2 Points - Quality of life summonses (e.g., excessive noise, alcohol related offenses, and animal offenses)
- 2 Points - Other arrests (e.g., disorderly conduct, domestic violence offense; 2 points per subject)
- 2 Points - Unsecured business found (report completed)
- 1 Point - All other town ordinance violations
- 1 Point - Hazardous conditions reported (report must be completed for incident)
- 1 Point - All parking tickets

178 842 F.3d 231, 236 (3d Cir. 2016).

179 *Id.*

180 *Id.*

181 *Id.*

182 *Id.* at 237.

183 *Id.* at 239.

184 Phillipsburg Policemen's Benevolent Ass'n Local No. 56 v. Twp. of Phillipsburg, A-5016-12T3, 2014 WL 8765463, at *1 (N.J. Super. Ct. App. Div. May 5, 2015).

- 1/2 Point - For every two individual community policing contacts per tour of duty (4 contacts = 2 points, 6 contacts = 3 points, etc.)[185]

Officers who received an index of two or more points received an exceptional performance evaluation.[186] The union argued that the policy undermined the state's prohibition on quotas, and the trial court agreed.[187]

The appellate court struggled because the statute's language only prohibited traffic violations and arrests and, according to the Township, officers could achieve an excellent evaluation without resorting to either.[188] The court acknowledged that the policy "does not, on its face, require quotas" but went on to find that the "defendants cannot avoid the statutory prohibition by crafting a carefully worded policy that does not, when read literally, violate a statutory mandate, but does so when implemented."[189] It added, "if it looks like a duck, quacks like a duck, then it probably is a duck."[190] Notwithstanding the court's acknowledgment of possible subterfuge, it reversed the trial court's conclusion that the policy constituted an illegal quota.[191] As I explain in more detail in Part IV, decisions like *Fraternal Order* and *Phillipsburg* are more than simple losses for police unions. They demonstrate how quota statutes can be evaded in ways that harm the public and frustrate efforts to reign in police malfeasance.

### *D. Settlements*

Social norms, legal hurdles, and an unfavorable jurisprudential landscape are features of quota litigation, but so are settlements. Government settlements with officers and civilians have touched various parts of the country—from small cities to big cities—and have ranged from five-figure to eight-figure payouts.[192] Though settlements often come with the qualification that they are not admissions of guilt, they provide a provisional glimpse behind the "blue wall" that quotas sometimes operate behind. Settlements typically come after courts reject motions by governments to dispense with litigation, leaving a body of law that may be useful for future challenges. At a bare min-

185 *Id.*
186 *Id.*
187 *Id.* at *2.
188 *Id.* at *3.
189 *Id.*
190 *Id.*
191 *Id.* at *4.
192 *See supra* note 26.

imum, settlements reveal how much a jurisdiction wants to avoid litigating their public insistence that they do not use quotas.

New York City, the jurisdiction with the country's largest police force,[193] has struggled with quota allegations and doled out the most in settlements. Adrian Schoolcraft—the involuntarily committed officer discussed above—survived a motion for summary judgment after a federal judge ruled that his speech was protected because he spoke as a citizen. Shortly thereafter, the City of New York settled with Schoolcraft for $600,000.[194] That same year, the City settled with Craig Matthews, an NYPD officer who complained that his Bronx precinct had competitions for who could make the most arrests, conduct the most stop-and-frisks, and issue the most summonses.[195] The Second Circuit ruled that Matthews's speech was protected by the First Amendment and the City subsequently settled with Matthews for $280,000 to avoid further litigation.[196]

A little less than a year later, after a federal judge certified a class of defendants subject to quota-based policing and subsequently imposed sanctions on the NYPD for destroying relevant evidence, the City of New York settled with the class for $75 million.[197] Under the settlement, the City agreed to reiterate its policy that quotas were illegal and that supervisors who implemented them could be subject to discipline.[198] In *Floyd v. City of New York*, the famous "stop and frisk" decision, quotas were a significant theme.[199]

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193 SHELLEY S. HYLAND & ELIZABETH DAVIS, BUREAU OF JUST. STAT., LOCAL POLICE DEPARTMENTS, 2016: PERSONNEL 3 (2019), https://www.bjs.gov/content/pub/pdf/lpd16p.pdf (noting that in 2016, New York City had the largest local police department with more than three times the number of employees than any other department).

194 Goodman, *supra* note 26.

195 Matthews v. City of New York, 779 F.3d 167, 169 (2d Cir. 2015); *see also* Christopher Mathias, *NYC to Pay $280,000 Over Cop Who Exposed City's Quota System*, HUFFPOST (Dec. 7, 2015, 3:48 PM), https://www.huffpost.com/entry/craig-matthews-nypd-quotas_n_5665cab8e4b072e9d1c6d86b.

196 Mathias, *supra* note 195.

197 *See* Stinson v. City of New York, No. 10 Civ. 4228, 2016 WL 54684, at *2–3 (S.D.N.Y. Jan. 5, 2016) (describing how the City failed to issue a litigation hold until three years after the complaint was filed, maintained a policy that provided for the destruction of evidence, destroyed materials related to CompStat meetings, destroyed activity reports, failed to preserve text messages, produced few responsive documents, was "grossly negligent," and acted in "bad faith"); Benjamin Weiser, *New York City to Pay Up to $75 Million Over Dismissed Summonses*, N.Y. TIMES (Jan. 23, 2017), https://www.nytimes.com/2017/01/23/nyregion/new-york-city-agrees-to-settlement-over-summonses-that-were-dismissed.html.

198 Weiser, *supra* note 197.

199 Floyd v. City of New York, 959 F. Supp. 2d 540, 596–602 (S.D.N.Y. 2013) (analyzing the pressure that quotas impart on officers to increase their stop numbers); *see also* Jenn Rolnick Borchetta, *Continuing to Reform the NYPD's Stop and Frisk Practice*, DEMOS (Feb. 16, 2016), https://www.demos.org/blog/continuing-reform-nypds-stop-and-frisk-practice (noting the NYPD norm of officers being judged "on how many stops they do").

On the other side of the country, the City of Los Angeles has paid millions in settlements to police officers who claim that the Los Angeles Police Department (LAPD) illegally required them to comply with ticket quotas. All of the settlements derive from allegations that Captain Nancy Lauer ordered officers to write at least eighteen traffic tickets each shift and required that eighty percent of citations be for major violations.[200] Officers who did not comply would be denied overtime or receive undesirable work assignments.[201] Despite the City's claim that the number was a goal and not a mandate, a jury awarded two officers over $1 million in damages.[202] Two years later, the City agreed to pay a settlement of almost $6 million to eleven police officers in a separate lawsuit over the same quota system.[203] In 2016, the City paid $950,000 to a former officer who also claimed that he was retaliated against for not participating in a ticket quota system.[204] Most recently, the City of Whittier, located in Los Angeles County, settled for $3 million with six officers who refused to participate in an arrest quota scheme.[205]

Miami Gardens, which has the largest Black population in Florida and has been called the "stop-and-frisk capital of America,"[206] has produced two settlements tied to quota-based policing. The first involved Earl Sampson, a Black man who was stopped more than four hundred times between 2008 and 2013, often for trespassing at his place of work.[207] Sampson led a class of Black and Latinx defendants who sued the City of Miami Gardens, arguing that the City's police department violated their constitutional rights by adhering to a racialized system of quota-based policing that led officers to selectively stop and frisk Black males ages fifteen to thirty.[208] A few weeks after a

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200 Joel Rubin & Catherine Saillant, *LAPD to Pay $10 Million in Traffic Ticket Quota Controversy*, L.A. TIMES (Dec. 10, 2013, 12:00 AM), https://articles.latimes.com/2013/dec/10/local/la-me-ln-ticket-quota-20131210.

201 *Id.*

202 Special Verdict, Chan v. City of Los Angeles, No. BC 418750 (Cal. Super. Ct. Apr. 11, 2011); Andrew Blankstein & Joel Rubin, *LAPD Officers Who Complained About Ticket Quotas Are Awarded $2 Million*, L.A. TIMES (Apr. 12, 2011, 12:00 AM), https://www.latimes.com/local/la-xpm-2011-apr-12-la-me-ticket-quotas-20110412-story.html.

203 Rubin & Saillant, *supra* note 200.

204 Branson-Potts & Reyes, *supra* note 26.

205 Sprague, *supra* note 26; *see also* Rivera v. City of Whittier, No. BC574443, 2017 WL 3579659, at *1 (Cal. Super. Ct. July 7, 2017) (evaluating the six plaintiffs' claims that they had been retaliated against for whistleblowing the existence of an illegal quota).

206 Meg O'Connor, *Inside 'The Stop-and-Frisk Capital of America*,' APPEAL (Feb. 21, 2019), https://theappeal.org/inside-the-stop-and-frisk-capital-of-america.

207 *Id.*

208 Sampson v. City of Miami Gardens, No. 13-CV-24312, 2015 WL 11202372, at *1 (S.D. Fla. May 27, 2015).

federal court declined a motion for summary judgment on those issues, the City settled with the plaintiffs for an undisclosed amount.[209]

During the litigation and subsequent settlement, a dispute about the use of quotas took place inside the police department. Wanda Gilbert, a Black crime analyst responsible for the police department's statistics, grew concerned about dubious arrests and quota-based policing that she claimed were tied to five percent yearly raises.[210] She corroborated the testimony in the *Sampson* litigation and claimed that the Black police chief, Matthew Boyd, directed officers "to stop all Black males between the ages of 15 and 30 years old."[211] She also described how "boys as young as seven," and adolescents "riding their bikes home from school" were accosted by police.[212] Gilbert wrote multiple memos to Boyd and met with City administrators, who told her not to put her concerns in writing because they would become public record.[213] She was fired after she wrote a final memo in 2011 protesting the department's practices. After Gilbert's own protracted legal battles, which made their way to the Eleventh Circuit, the City settled with her for approximately $1 million.[214]

Quota-based policing can also be fatal, as was the case in Atlanta when police officers killed an elderly woman during an illegal raid of her home. Officers in the Atlanta Police Department's narcotics unit, operating under a quota, pulled a gun on a man they had previously arrested, planted marijuana on him, and demanded that he tell them where they could find drugs.[215] He made up an address, which happened to be the residence of ninety-two-year-old Kathryn Johnston and had a wheelchair ramp in the front.[216] The officers made false statements to a magistrate judge to secure a no-knock search warrant.[217] They could not kick down the security gate, so they used a pry bar and a battering ram during the nighttime raid.[218] Johnston lived

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209 *See* Order and Notice of Settlement, Sampson v. City of Miami Gardens, No. 13-CV-24312 (S.D. Fla. June 23, 2015), ECF No. 228.

210 *See* Charles Rabin, *She Was Fired After Speaking Out About Bad Arrests. She Sued and Just Won $1 Million*, Miami Herald (Dec. 4, 2018, 6:01 PM), https://www.miamiherald.com/news/local/crime/article222442315.html.

211 Heather Dunhill, *Retired Crime Analyst Wanda F. Gilbert on Police Reform and Growing Up in Segregated South Florida*, Sarasota Mag. (Aug. 17, 2020, 11:42 AM), https://www.sarasotamagazine.com/news-and-profiles/2020/08/wanda-f-gilbert.

212 *Id.*

213 *Id.*

214 Rabin, *supra* note 210.

215 Radley Balko, *The Militarization of America's Police Forces*, 11 Cato's Letter 1, 1–2 (2013).

216 Ted Conover, *A Snitch's Dilemma*, N.Y. Times Mag. (June 29, 2012), https://www.nytimes.com/2012/07/01/magazine/alex-white-professional-snitch.html.

217 *Id.*

218 *Id.*

alone in a dangerous neighborhood, where an elderly neighbor was recently raped.[219] She fired one shot, which provoked 39 shots by the officers, some of which ultimately killed her.[220] After the shooting, the officers searched the home, found no drugs, and subsequently planted three bags of marijuana they had seized earlier that day in Johnston's basement.[221] Afterward, the officers conspired to fabricate a story that they then shared with homicide investigators.[222] An FBI investigation found that the narcotics unit had a performance quota of nine arrests per month.[223] In her sentencing of the three officers, U.S. District Judge Julie Carnes concluded that the pressure to adhere to the quotas played a role in the killing.[224] The City of Atlanta ultimately awarded a $4.9 million settlement to the family of Kathryn Johnston.[225]

It would be a mistake to understand quota settlements as a big city phenomenon. Some of these settlements have surfaced in small towns across the country. Local governments have settled cases involving allegations of quota-based policing in the City of Mendham in central New Jersey,[226] Smyrna, Delaware,[227] Lehighton, Pennsylvania,[228] Novi, Michigan,[229] Byrnes Mills, Missouri,[230] and the central California city of Paso Robles.[231] Financially, law professors Joanna Schwartz and John Rappaport have explained how these kinds

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219 *Id.*

220 *Id.*

221 *Third Atlanta Police Officer Pleads Guilty in Fatal Shooting of Elderly Woman*, DEPT. OF JUST. (Oct. 30, 2008), https://www.justice.gov/archive/opa/pr/2008/October/08-crt-972.html.

222 *Id.*

223 Bill Rankin, *Ex-Cops Get 5–10 Years for Drug Raid – Judge Agrees Atlanta Police Quotas Influenced Officers' Behavior*, ATLANTA J.-CONST., Feb. 25, 2009, at C1.

224 *Id.*

225 Ernie Suggs, *City to Pay Slain Woman's Family $4.9 Million*, ATLANTA J.-CONST. (Aug. 11, 2012), https://www.ajc.com/news/local/city-pay-slain-woman-family-million/GWqsgDArzmOhvpb7iPY6FI.

226 *See* Wright, *supra* note 26.

227 *ACLU Reaches Settlement with Smyrna Police over Wrongful Arrests*, ACLU (Feb. 19, 2015), https://www.aclu.org/press-releases/aclu-reaches-settlement-smyrna-police-over-wrongful-arrests.

228 *See* Hall, *supra* note 49.

229 *See* Phillips, *supra* note 26.

230 *See* Robert Patrick & Jeremy Kohler, *Former Byrnes Mill Police Chief Stole $12,800 from Suspects, Feds Say*, ST. LOUIS POST-DISPATCH (Apr. 20, 2017), https://www.stltoday.com/news/local/crime-and-courts/former-byrnes-mill-police-chief-stole-from-suspects-feds-say/article_faa278bd-25ef-5a8d-953a-534bc11f62c0.html.

231 *See* Scott Brennan, *City Pays $125,000 to Settle Lawsuit over Ticket Quotas*, PASO ROBLES DAILY NEWS (Mar. 24, 2014, 8:23 PM), https://pasoroblesdailynews.com/city-pays-125000-settle-lawsuit-ticket-quotas/15896.

of settlements can be consequential for smaller jurisdictions.[232] Socially, such settlements—which circulate in mainstream media outlets as well as in local papers of the day—can lead to the kinds of distrust in police that exists in bigger cities. The crucial difference is that many of these localities are not freighted by the same racial politics of large urban cities.[233] The geographical diversity of these settlements highlights how disputes about quota-based policing impact not only racial minorities—the presumed subjects of mass incarceration—but a broader and unassuming public.

Overall, one can glean a few themes from the legal challenges to police quotas discussed in this Part. First, many hurdles preclude these cases from being meaningfully heard by courts. Some obstacles reflect the general "closing of the courthouse doors" to civil rights litigants and criminal defendants.[234] Other impediments, like the code of silence, are specific to police culture and jurisprudence. Second, cases that do make it to a trial on the merits are still unlikely to win. Third, and relatedly, quota litigation is especially likely to settle. Settlements sit alongside victories, allegations, memoirs, police recordings, and criminological scholarship that all point to the existence of police quotas. With the definitional, statutory, and jurisprudential landscape sketched out, the Article will now turn to consider policy considerations both for and against the practice of police quotas.

## III
## The Theoretical Contours of Police Quotas

Most observers of the criminal justice system typically understand quotas through a pejorative lens. In scholarly literature, robust defenses of quotas are relatively rare. The closest thing to a defense is the claim by criminology scholars and law enforcement officials that police need to be evaluated and monitored in some way. This Part begins by considering the best possible rationales for why quotas

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[232] *See* John Rappaport, *How Private Insurers Regulate Public Police*, 130 Harv. L. Rev. 1539, 1565–66 (2017) (describing how large municipalities have "broad tax bases and big budgets" that allow them "to absorb the shock of large judgments and settlements that might seriously damage a smaller city"); *see also* Joanna C. Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. Rev. 1144, 1174 (2016) ("Smaller jurisdictions will presumably feel the financial effects of lawsuits more acutely.").

[233] *See* Kim Parker et al., Pew Rsch. Ctr., What Unites and Divides Urban, Suburban, and Rural Communities 4 (2018), https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2018/05/Pew-Research-Center-Community-Type-Full-Report-FINAL.pdf (describing the racial makeup and attitudes across different types of geographical communities).

[234] *See* Chemerinsky, *supra* note 136 (describing how the Supreme Court's decisions have resulted in restricted access to the courts for those hoping to enforce their constitutional rights).

might be desirable and defensible. Despite the normative position this Article adopts, it is analytically unsatisfying to oppose police quotas without confronting possible arguments.

Although some of the arguments in favor of quotas are weighty, Section III.B contends there are more compelling reasons on the side of prohibiting them. This Section builds on arguments that have been raised by opponents by offering a more comprehensive view of why quotas constitute bad policy. Moreover, it situates these objections within the definitional, statutory, and jurisprudential context described in Parts I and II. In doing so, Section III.B lays the groundwork for Part IV's normative claims.

### *A. Defenses*

There are at least four possible defenses of quotas that surface in criminology, in the media, and in public statements made by law enforcement officials. The first is that quotas protect against police shirking and idleness. The second is that quotas make the police more productive (e.g., through "performance targets," "goals," "expectations"). Both of these defenses assume that there is a specific amount of illegal activity occurring in the world, and that officers should respond to some portion of it. The third defense involves the evaluative utility of quotas and maintains that quotas provide an ostensibly neutral way to assess police performance. The final defense of quotas is rare and accepts the profit-generating nature of policing.

#### *1. Police Idleness*

The cultural stereotype of lazy, underactive police officers is tied to a longstanding anxiety about police productivity. Concerns about shirking invoke basic agency theory where police officers act as agents for the principal. It is assumed that police officer-agents, "will shirk their responsibilities when given half a chance."[235] If they are not "sufficiently monitored or bonded, agents will be lazy or irresponsible—or at least not entirely selfless in their motivations."[236] Quotas are an attempt to reduce the agency costs that come with police administration. Although concerns about shirking exist across many organizations,[237] these worries have unique expressions in policing. In 1909, Leonhard Fuld, one of the earliest scholars of American urban

[235] Eric W. Orts, *Shirking and Sharking: A Legal Theory of the Firm*, 16 YALE L. & POL'Y REV. 265, 276–77 (1998).

[236] *Id.*

[237] *See generally* JOHN BREHM & SCOTT GATES, WORKING, SHIRKING, AND SABOTAGE: BUREAUCRATIC RESPONSE TO A DEMOCRATIC PUBLIC (1997) (studying shirking in federal, state, and local bureaucracies in order to debunk the concept of the "lazy bureaucrat").

policing, observed that "the policeman's life is a lazy life . . . as much of his time is spent doing nothing."[238] Fuld also noted that police are different because "[t]he authority with which they are invested . . . create in them an inordinate desire to shirk their work or, as they themselves express it, 'to take it easy.'"[239] NYPD spokesman Al O'Leary captured this sentiment in the 1990s. When six transit cops donned nooses at a news conference to protest their "bondage" to quotas, O'Leary lambasted: "If the union is suggesting we should go back to the days of coffee-drinking, doughnut eating, do-nothing cops, then they're way out of sync with policing today."[240]

Most defenses of quotas reject the formal label but embrace the idea of evaluating officers because of a concern about laziness. When Atlanta Police Chief Richard Pennington rejected the idea that his department utilized quotas, he conceded to maintaining a related euphemism and admitted, "Yes, we have performance measures in the Atlanta Police Department. We have to have performance measures because if we don't have them, the officers would come in every day with nothing on their sheets."[241] Departments certainly cannot eliminate shirking, but quotas can address this concern by demanding a minimum amount of law enforcement activity while utilizing employment sanctions to ensure compliance. Considering the significant amount of money spent on policing,[242] it is reasonable to expect some minimum output level, whether in the seemingly mundane realm of traffic enforcement or the more serious world of arrests.[243]

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238 LEONHARD FELIX FULD, POLICE ADMINISTRATION: A CRITICAL STUDY OF POLICE ORGANISATIONS IN THE UNITED STATES AND ABROAD 91 (2d ed. 1910).

239 *Id.* at 48–49.

240 Dean Chang, *Tix Quota No Token Rule: TA Cops*, N.Y. DAILY NEWS, Nov. 17, 1992, at 15.

241 Brenda Goodman, *Atlanta's Mayor Defends Chief Against Misconduct Accusations*, N.Y. TIMES (May 1, 2007), https://www.nytimes.com/2007/05/01/us/01atlanta.html.

242 *See* Niall McCarthy, *How Much Are U.S. Cities Spending on Policing in 2020?*, FORBES (June 12, 2020, 5:21 AM), https://www.forbes.com/sites/niallmccarthy/2020/06/12/how-much-are-us-cities-spending-on-policing-in-2020-infographic (stating that police budgets run as high as billions of dollars in several major cities in the United States, including New York ($5.61 billion), Los Angeles ($1.73 billion), and Chicago ($1.68 billion)).

243 *See generally* CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD P. HAIDER-MARKEL, PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP (2014) (describing the impact of police stops on racial disparities and perceptions of citizenship in the United States); Anna Roberts, *Arrests as Guilt*, 70 ALA. L. REV. 987 (2019) (examining the consequences of arrests and the implicit fusion of arrests and guilt); Rachel A. Harmon, *Why Arrest?*, 115 MICH. L. REV. 307 (2016) (arguing against the outsized role arrests play in policing); Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809 (2015) (examining how arrests are systematically used as a regulatory tool outside of the criminal justice system).

*2. Productivity*

Ensuring sufficient police activity is another rationale for quotas.[244] While related to idleness, this defense is premised on the idea that there is a certain amount of illegal activity in the world (i.e., traffic violations or criminal offenses) and that officers should attend to some portion of it.[245] Lieutenant Colonel Kelly of Chesterfield County, located outside of Richmond, Virginia, captured this sentiment when he stated, "Our officers are on the road 12 hours a day, so, if in a 12-hour period of time they stop three cars, I don't think that's unfairly targeting our citizens."[246] Productivity rationales also ostensibly ensure the fair distribution of work within a police force.[247] An officer in Georgia recently recounted how one of his colleagues refused to answer calls or provide backup to other officers, and admitted that the department would "need a quota system to get a guy like that moving or he'd just park his car and sleep."[248]

To make this productivity rationale more concrete, consider the case of drunk driving. Although Americans generally agree that driving while drunk is wrong and dangerous, many still tolerate it.[249] Setting aside real and often consequential issues of implementation,[250] as a general matter, one might argue that the careful dedication of police resources to drunk driving is uncontroversial. It would also be

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244 *See* Bronstein, *supra* note 21, at 551–53.

245 *See* NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., DEP'T OF TRANSP., 2 MANUAL FOR POLICE TRAFFIC SERVICES PERSONNEL PERFORMANCE EVALUATION SYSTEM 1 (1977) ("Productivity is not another name for 'quotas.' Productivity refers to measures of job performance to be used in comparison to expected levels of performance.").

246 Melissa Hipolit, *Former Police Officer Exposes Chesterfield's Ticket Quota Goals*, WTVR (July 15, 2014, 6:04 AM), https://wtvr.com/2014/07/14/chesterfield-quota-investigation.

247 *See* ATLANTA CITIZEN REV. BD., STUDY AND INQUIRY INTO THE ATLANTA POLICE DEPARTMENT'S INVOLVEMENT IN THE DEATH OF MS. KATHRYN JOHNSTON 24 (2010) ("A manager must ensure that officers are working and the work is fairly distributed.").

248 Bill Torpy, *Did DeKalb's Cops Have Arrest and Ticket Quotas?*, ATLANTA J.-CONST. (Oct. 2, 2016), https://www.ajc.com/news/local/bill-torpy-large-did-dekalb-cops-have-arrest-and-ticket-quotas/GxkflThnOJIuaFTSQ5Fd7N.

249 *See generally* BARRON H. LERNER, ONE FOR THE ROAD: DRUNK DRIVING SINCE 1900 (2011) (tracing the history of drunk driving and efforts to stop it); JAMES B. JACOBS, DRUNK DRIVING: AN AMERICAN DILEMMA (1989) (analyzing Americans' drunk driving problem and anti-drunk driving policies); Fredrick Kunkle, *Americans Are Still Way Too Tolerant of Drunken Driving*, WASH. POST (Aug. 31, 2016, 8:02 AM) https://www.washingtonpost.com/news/tripping/wp/2016/08/31/americans-are-still-way-too-tolerant-of-drunk-driving-safety-advocates-say (discussing the problem of drunk driving in the United States today).

250 Implementation questions are related but not necessarily fatal to this rationale; instead such administrative issues—which unavoidably implicate questions of race, poverty, gender, and sexual orientation—can be attended to by training, oversight, and compliance.

reasonable to expect results, particularly in places where drunk driving is likely to occur (e.g., large sporting events) or during times of the year when people may be more willing to drink and drive (e.g., holidays). The absence of a numerical goal or a threat of adverse employment action would render this enforcement priority an empty mandate. For supporters of this defense, ticket quotas raise the stakes.

*3. Evaluation*

One might also argue that quotas can be useful for evaluative purposes. Various arguments are available on this front. First, as a general matter, employment-based, numerical expectations are unremarkable. In its discussion of quotas, the Atlanta Citizen Review Board explained, "Production quotas are a common part of modern life. Almost all of us work at jobs were [sic] we have explicit or implicit numerical goals."[251] The power to arrest and a legally sanctioned monopoly over violence differentiate police from typical employees, but it is not obvious that these extraordinary powers should exempt law enforcement from standard models of employer evaluation. In fact, such an exemption might add another layer to "police exceptionalism," much to the chagrin of criminal justice reformers.[252] Defenders of quotas might argue that numbers-based imperatives should not be the *only* standards for evaluating police officers, but they would certainly include quotas among them. They would likely point to the fact that many statutes expressly prohibit law enforcement from relying exclusively on numbers when assessing officers.[253] This argument for the evaluative utility of quotas focuses on the standard nature of numbers-based evaluations in the employment world and highlights the need to consider numbers alongside other factors.

Besides the normalcy of quantitative requirements in work settings, evaluation-based defenses of quotas also focus on their perceived tangibility and neutrality. On the former, Joe Giacalone, a former New York City law enforcement officer who defends the use

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251 ATLANTA CITIZEN REV. BD., *supra* note 247, at 22.

252 *See, e.g.*, Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1843 (2015) ("Policing agencies—for that is what they are, agencies of executive government—fail to play by the rules of administrative governance.").

253 *See, e.g.*, N.J. STAT. ANN. § 40A:14-181.2 (West, Westlaw through L.2020, c.126 and J.R. No. 2) ("The department or force shall not use the number of arrests or citations issued by a law enforcement officer as the sole criterion for promotion, demotion, dismissal, or the earning of any benefit provided by the department or force."); N.C. GEN. STAT. ANN. § 20-187.3 (West, Westlaw through S.L. 2020-97 of 2020 Reg. Sess.) ("Pay and promotions of members of the Highway Patrol shall be based on their overall job performance and not on the basis of the volume of citations issued or arrests made.").

of quantitative benchmarks, claims that "[t]here are very few ways we can evaluate police officers' activity."[254] Since it is impossible to "count how many times [police officers] shake someone's hand on the street," Giacalone is unbothered by critiques of quotas and insists that "it's written in the job description to make arrests and write summons."[255] Alongside this results-oriented approach to policing is the idea that quotas are straightforward and empirically superior to subjective assessments. Indeed, criminologists have acknowledged that quotas are sometimes justified because "such numbers are easy to calculate and compare."[256] Some describe these quantitative metrics as less vulnerable to the idiosyncrasies of police management.[257]

The idea of objectivity is significant because promotion in policing is notoriously nepotistic and subject to interpersonal politics.[258] Quotas, it could be argued, provide a more impersonal way to assess employee productivity and address longstanding concerns about diversity in law enforcement.[259]

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254 George Joseph, *NYPD Commander's Text Messages Show How the Quota System Persists*, APPEAL (Dec. 12, 2018), https://theappeal.org/nypd-commanders-text-messages-show-how-the-quota-system-persists.

255 *Id.*

256 STEVEN M. COX, SUSAN MARCHIONNA & BRIAN D. FITCH, INTRODUCTION TO POLICING 243–44 (3d ed. 2017).

257 *See* FRANK J. LANDY, PERFORMANCE APPRAISAL IN POLICE DEPARTMENTS 6 (1977) ("One of the major issues in performance measurement is the nature of the information gathered . . . . Most critics of subjective or judgmental performance evaluation imply that the judgment made by the supervisor is more related to personal idiosyncrasies than to the behavior of the person being rated.").

258 *See* THOMAS J. GRADEL & DICK SIMPSON, CORRUPT ILLINOIS: PATRONAGE, CRONYISM, AND CRIMINALITY 136 (2015) (discussing how a Chicago police officer failed to receive a promotion for failing to follow the directions of a corrupt local politician); STEVEN LEINEN, BLACK POLICE, WHITE SOCIETY 136 (1984) (discussing how promotion for detectives in the NYPD relied on both quantitative factors (number of arrests), and the leveraging of personal connections ("having 'sponsors' or 'personal contacts' on the job")); Andrea Shalal & Jonathan Landay, *Black Cops Say Discrimination, Nepotism Behind U.S. Police Race Gap*, REUTERS (July 2, 2020, 10:28 AM), https://www.reuters.com/article/us-minneapolis-police-blackofficers/black-cops-say-discrimination-nepotism-behind-u-s-police-race-gap-idUSKBN2432T8 (stating that discrimination in hiring and promotion has hampered Black representation in police forces in the United States).

259 On diversity, see MANGAI NATARAJAN, WOMEN POLICE IN A CHANGING SOCIETY: BACK DOOR TO EQUALITY (2008) (describing the development of women police over the past twenty years); DAVID E. BARLOW & MELISSA HICKMAN BARLOW, POLICE IN A MULTICULTURAL SOCIETY: AN AMERICAN STORY (2018) (describing the role that social, political, and economic relationships have played in the historical development of the police); *see generally* David Alan Sklansky, *Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209 (2006) (describing the recent dramatic shift in the demographics of police departments).

*4. Revenue Generation*

The image of mercenary police officers seizing civilians to meet quantitative goals is unsavory and makes explicitly revenue-based defenses of quotas rare. However, administrative practices across the country reveal an undeniable fact: law enforcement helps generate money for municipal coffers. This stark reality became clear in Nevada a few years ago, when state legislators vigorously protested the decriminalization of traffic tickets.[260] They argued that such an action would lead to an annual loss of $33 million in the counties of Washoe and Reno.[261]

The profitability of law enforcement also helps explain why cities get nervous when police officers engage in purposeful work slow downs. Public safety is an issue, but so is money. "Cops not writing summonses is usually very effective" and garners immediate attention "because it affects the city finances greatly."[262] Perhaps the most obscene version of policing for profit was the well-documented debacle in Ferguson, Missouri, where the federal government found that revenue, rather than public safety needs, shaped the city's racially discriminatory policing.[263] Defenders of revenue-based policing might concede that profit-motivated arrest quotas are indefensible and instead limit their defense to quotas for traffic tickets and violations, which represent the core feature of all anti-quota statutes and pending bills.[264]

A revenue-based defense of police quotas would highlight the fact that, in many jurisdictions, revenue from traffic violations helps finance socially valuable goods. Pennsylvania imposes a two-dollar surcharge on traffic violations that goes to its Access to Justice Account, which funds civil legal services in the state.[265] A recent California law imposes a four-dollar fee on moving violations to support emergency air medical services.[266] In a driver-friendly state with

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260 James DeHaven, *Do Traffic Tickets Unfairly Hurt the Poor? Nevada Lawmakers Eyeing Traffic Law Reforms*, RENO GAZETTE-J. (Dec. 21, 2017, 4:42 PM), https://www.rgj.com/story/ news/politics/2017/12/21/do-traffic-tickets-unfairly-hurt-poor-nevada-lawmakers-again-eyeing-traffic-law-reforms-despite-city/975423001.

261 *Id.*

262 Haven Orecchio-Egresitz, *Police Have Traditionally Protested Anti-Police Rhetoric by Making Fewer Arrests. Right Now That's Exactly What the Public Wants*, INSIDER (June 16, 2020, 1:41 PM), https://www.insider.com/police-have-historically-protested-by-making-fewer-arrests-its-become-2020-6.

263 *See* Ferguson Report, *supra* note 17.

264 *See infra* Appendices A & B.

265 42 PA. STAT. AND CONS. STAT. ANN. § 3733.1(c)(3) (West, Westlaw through 2020 Reg. Sess. Act 95).

266 *Governor Signs Bipartisan Bill to Extend Funding for Emergency Air Medical Services*, PR NEWSWIRE (Oct. 8, 2019, 2:42 PM), https://www.prnewswire.com/news-

the country's largest population, this surcharge directly helps the critical victims of automobile accidents[267] and improves services to rural residents who need critical care in urban centers.[268] Surcharges for traffic violations in New Jersey fund research on spinal cord repair, brain injury, and autism treatment.[269] In Michigan during the 2017-2018 fiscal year, penal fine revenues, including fines from traffic tickets, generated approximately $24.6 million, with $24.2 million distributed to public libraries and $392,800 distributed to law libraries.[270] Notably, all of these states have quota prohibitions on the books.[271] Government benefits derived from traffic violations, defenders would argue, are not extraordinary.

With this reality of government-generated profit in mind, a defender of quotas would argue that the remaining issue is whether quotas are an ideal way to actualize the subsidies that flow out of traffic laws. This is a question of tradeoffs.

Many jurisdictions rely on these kinds of cross-subsidies because of the legislative and electoral unpopularity of raising taxes. Jeff Cumins, a political scientist and expert in state budgets, captures this problem: "Legislators can get creative in ways to find revenue. Particularly in the last decades we've been in an anti-tax orientation, and so this is one way to raise money for legislators' pet projects and programs."[272] Funding by traffic violations is particularly salient in rural parts of the country as well as states in the southeast, where research has shown that jurisdictions have an unusually high reliance on fees and fines.[273] These localities have small property tax bases and collect fewer sales taxes than their urban counterparts because of relatively lower commerce.[274] Thus, "[e]ven when the ethical and fiscal problems with financing government through fines are apparent,

releases/governor-signs-bipartisan-bill-to-extend-funding-for-emergency-air-medical-services-300934138.html; CAL. GOV'T CODE § 76000.10(c)(1) (West, Westlaw through ch. 372 of 2020 Reg. Sess.).

267 § 76000.10(e)(1).

268 *Governor Signs Bipartisan Bill to Extend Funding for Emergency Air Medical Services*, *supra* note 266.

269 Laura Herzog, *We Paid $405M in Tickets Last Year; See Where the Money Went*, NJ.COM (Jan. 16, 2019), https://www.nj.com/news/2016/05/where_your_ticket_payment_money_goes_funds_new_jer.html.

270 MICHIGAN HOUSE OF REPRESENTATIVES FISCAL AGENCY, FISCAL BRIEF: TRAFFIC CITATION REVENUE 5 (2019), https://www.house.mi.gov/hfa/pdf/alpha/fiscal_brief_traffic_citation_revenue.pdf.

271 *See infra* Appendix A.

272 Liz Gonzalez, *Special Report: Why Traffic Tickets in California Are So High*, FOX26 NEWS (Apr. 29, 2019), https://kmph.com/news/local/special-report-why-traffic-tickets-in-california-are-so-high.

273 *See* Maciag, *supra* note 5.

274 *Id.*

viable alternatives remain hard to find."[275] Defenders of quota-based policing would contend that such regimes are just one part of a larger set of tradeoffs when policymakers are considering how to diversify money streams. They would argue that this version of policing should be openly debated and carefully considered instead of categorically rejected based on grotesque examples. Implementation and the specter of discrimination still loom, but defenders of quotas would maintain that these issues are analytically distinct and correctable.[276]

### *B. Counterarguments*

Law enforcement, scholars of policing, critics of the police, and the media have all offered insights that quickly dispense with some of these rationales for quotas. This subsection supplements these insights with new objections. It offers a point-by-point refutation of the above-described defenses of quotas—some of which are compelling at first glance but suffer from practical and empirical problems.

#### *1. The Allure of Activity*

First, quota-based policing does not guard against shirking. Quotas may produce law enforcement activity, but officers who want to shirk will still find ways to cut corners even when there are quotas in place designed to keep them productive.[277] Consider the cases of Blaine Morgan and Michael Baker, two police officers in Charleston, South Carolina. Both officers disclosed that they falsified traffic tickets in an effort "to boost their respective citations totals" and subsequently resigned.[278] Their scam involved writing bogus traffic tickets without motorists' knowledge.[279] The officers had the tickets dismissed because they had no intention of following through on them in court. But, as one news article said at the time, "one of the officers apparently slipped up. He did not dismiss a ticket in time for court

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[275] Matt Ford, *The Problem with Funding Government Through Fines*, ATLANTIC (Apr. 2, 2015), https://www.theatlantic.com/politics/archive/2015/04/the-problem-with-funding-government-through-fines/389387.

[276] *See supra* note 249.

[277] *See* TOM BARKER, POLICE ETHICS: CRISIS IN LAW ENFORCEMENT 131 (3d ed. 2011) ("Supervisors who impose quotas . . . increase the risks that officers will cut corners or bend the laws . . . to meet the quotas . . . ."); ROGER G. DUNHAM & GEOFFREY P. ALPERT, CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS 207 (7th ed. 2015) ("Management practices may encourage corruption by imposing pressures for arrest quotas or make it acceptable to cut corners to effect arrests.").

[278] Michael Majchrowicz, *2nd Charleston Police Officer Who Falsified Traffic Tickets Resigns from Department*, POST & COURIER (Sept. 14, 2019), https://www.postandcourier.com/news/2nd-charleston-police-officer-who-falsified-traffic-tickets-resigns-from-department/article_16b6279e-a334-11e9-a925-87076f916396.html.

[279] *Id.*

and the driver was notified."[280] After Officer Morgan resigned; the Charleston Police Department admitted that Morgan artificially inflated the number of tickets written in an attempt to conceal the fact that he was not actively and appropriately patrolling his area.[281] This statement casts doubts on whether quotas can mitigate shirking and highlights the perverse incentives they invite.

A similar case involving the termination of a ticket-falsifying, quota-fulfilling officer made it to the Supreme Court of Mississippi. The state fired officer Sammy William Ray for writing "ghost tickets."[282] In a sworn statement, he confessed, "During the time I have been employed with the [Mississippi Department of Public Safety], I have written 20–25 tickets that may or may not be factual tickets . . . . This was done to increase my ticket activity."[283] In an interview where he was questioned about his motives, he unambiguously added, "I was just trying to play a numbers game. You know, just trying to stay out of hot water."[284]

A massive overtime abuse scandal in Massachusetts also injects doubt into whether police quotas actually make officers more productive. The overtime scandal dated back to 1996 and involved more than twenty officers in the now-defunct Troop E of the Massachusetts State Police (MSP), which patrolled the Massachusetts Turnpike.[285] Prosecutors claimed that officers were "expected to issue a minimum of 8-10 citations" for each shift.[286] Inability to meet this requirement "had to be explained to supervisors and command staff," and "[r]epeated failures to meet this quota often resulted in a trooper being blocked from receiving [such] overtime opportunities."[287]

Because MSP received federal funding, the Department of Justice became involved and ultimately charged and convicted eight people of

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[280] Anne Emerson, *CPD Chief: Full-Scale Investigation into Unwarranted Ticket Writing*, ABC4 NEWS (July 11, 2019), https://abcnews4.com/news/local/cpd-chief-full-scale-investigation-into-unwarranted-ticket-writing.

[281] *Id.*

[282] Ray v. Miss. Dep't of Pub. Safety, 172 So. 3d 182, 184 (Miss. 2015).

[283] *Id.* at 186.

[284] *Id.* at 185.

[285] Matt Rocheleau, *State Police Overtime Scheme, Illegal Ticket Quota Was Devised by Higher-Ups 20 Years Ago, Former Trooper Says*, BOS. GLOBE (Feb. 6, 2020, 8:56 PM), https://www.bostonglobe.com/2020/02/07/metro/state-police-overtime-scheme-ticket-quota-system-stretches-back-20-years-former-trooper-says.

[286] Scott J. Croteau, *Were Mass. State Police Troopers in OT Scandal Told to Fill Ticket Quotas? Agency Denies New Allegation in Federal Court Filing*, MASS. LIVE (Mar. 20, 2019), https://www.masslive.com/news/2019/03/were-mass-state-police-troopers-in-ot-scandal-told-to-fill-ticket-quotas-agency-denies-new-allegation-in-federal-court-filing.html.

[287] *Id.*

various embezzlement-related charges.[288] Quotas were a motivating factor in the overtime scheme. According to one of the Department of Justice's sentencing announcements, the officers "admitted that they had been paid for hours they did not work, and for overtime shifts from which they left early."[289] The scheme was so elaborate that the federal judge directed prosecutors to revisit whether the parties should be charged with conspiracy.[290]

Elsewhere, quota-based policing has led officers to plant crack on innocent people,[291] lazily dump summonses on clearly abandoned cars,[292] cite fictitious drivers,[293] and ticket dead people.[294] Such malfeasance is not only in the domain of individual decisionmaking but can shape organizational culture. Police supervisors who require officers to meet quotas are also beholden to numbers in ways that encourage the aforementioned forms of misconduct.[295] The absence of empirical scholarship on quota-based shirking, coupled with the exis-

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[288] *See, e.g.*, U.S. Attorney's Office, District of Mass., *Former Massachusetts State Trooper Sentenced to Three Months in Prison for Overtime Fraud* (Mar. 26, 2019), https://www.justice.gov/usao-ma/pr/former-massachusetts-state-trooper-sentenced-three-months-prison-overtime-fraud.

[289] Press Release, U.S. Attorney's Office: District of Mass., Two Massachusetts State Troopers Sentenced in Overtime Abuse Investigation (June 4, 2019), https://www.justice.gov/usao-ma/pr/two-massachusetts-state-troopers-sentenced-overtime-abuse-investigation.

[290] Matt Rocheleau, *Judge Orders Federal Prosecutors to Explore Whether State Police OT Scandal Was a 'Conspiracy*,' BOS. GLOBE (Jan. 30, 2020, 3:45 PM), https://www.bostonglobe.com/2020/01/30/metro/judge-wolf-orders-federal-prosecutors-explore-whether-state-police-overtime-scandal-was-conspiracy.

[291] *See* Oren Yaniv, *Ex-Cop Jason Arbeeny Cries for Judge, Gets Probation; Judge Gustin Reichbach Could Have Given Him 4 Years*, N.Y. DAILY NEWS (Feb. 3, 2012), https://www.nydailynews.com/new-york/ex-cop-jason-arbeeny-cries-judge-probation-judge-gustin-reichbach-4-years-article-1.1016083; Press Release, Drug Policy Alliance, Former NYPD Detective Testifies that Police Regularly Plant Drugs on Innocent People to Meet Arrest Quota (Oct. 12, 2011), https://www.drugpolicy.org/news/2011/10/former-nypd-detective-testifies-police-regularly-plant-drugs-innocent-people-meet-arres; Jim Dwyer, *The Drugs? They Came from the Police*, N.Y. TIMES (Oct. 13, 2011), https://www.nytimes.com/2011/10/14/nyregion/those-drugs-they-came-from-the-police.html.

[292] ELIZABETH REUSS-IANNI, TWO CULTURES OF POLICING: STREET COPS AND MANAGEMENT COPS 112 (1983).

[293] Tom Jackman, *Md. Trooper Wrote DWI Tickets to Fictitious Drivers, Pleads Guilty to Perjury*, WASH. POST (Aug. 6, 2020, 6:33 AM), https://www.washingtonpost.com/crime-law/2020/08/06/md-trooper-wrote-dwi-tickets-fictitious-drivers-pleads-guilty-perjury.

[294] Paul Pizzuto, *Ex-NYPD Officer, Says He Ticketed Dead People to Meet Quotas*, HUFFPOST (Sept. 7, 2012, 11:17 AM), https://www.huffpost.com/entry/paul-pizzuto-ex-nypd-officer-ticketed-dead-people-quotas_n_1864310.

[295] *See* Christopher Slobogin, *Testilying: Police Perjury and What to Do About It*, 67 U. COLO. L. REV. 1037, 1044 n.32 (1996) ("[P]olice supervisors, driven by the same crime control and quota pressures that drive field officers, actively encourage testilying.").

tence of widespread evidence of police corruption,[296] leads to the reasonable conclusion that these requirements do not incentivize diligent policing and instead contribute to the scourge of wrongful convictions.[297]

### 2. *Arbitrariness*

Arbitrariness and inattention to quality foil the expectation that quotas will enhance police productivity. It bears noting that how one measures productivity depends on how one envisions the function of police. The purpose of law enforcement is usually tied to standard conceptions of crime control, public safety, and private property protection. But many critics of the criminal justice system attribute other, less uplifting goals, to the police, including enforcement of the racial order and oversight of the poor. There is much evidence to support the latter understanding.[298] However, this Section's analysis will proceed, for argument's sake, with the former, good-faith conception of the police.

Even assuming that police serve the socially beneficial purpose of protecting life and property, numbers will not be completely impeachable and have a role in how this division of government is evaluated. But per se quotas are blunt objects that do not neatly get at public

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296 *See* IVKOVIC, *supra* note 116; Rudovsky, *supra* note 116; Russell Covey, *Police Misconduct as a Cause of Wrongful Convictions*, 90 WASH. U. L. REV. 1133, 1133 (2013); Carroll Seron, Joseph Pereira & Jean Kovath, *Judging Police Misconduct: "Street-Level" Versus Professional Policing*, 38 L. & SOC'Y REV. 665 (2004) (surveying New York City residents' accounts of instances where police officers engaged in prohibited behavior such as use of unnecessary force and abuse of authority).

297 *See* JESSICA S. HENRY, SMOKE BUT NO FIRE: CONVICTING THE INNOCENT OF CRIMES THAT NEVER HAPPENED 66 (2020) ("Quotas result in no-crime wrongful convictions because they motivate the police to arrest people for crimes that never happened and cause innocent people to plead guilty [to them] so they can go home.").

298 *See, e.g.*, PAUL BUTLER, CHOKEHOLD: POLICING BLACK MEN (2017); SALLY E. HADDEN, SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS (2001); ALEXES HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR (2016); TALITHA L. LEFLOURIA, CHAINED IN SILENCE: BLACK WOMEN AND CONVICT LABOR IN THE NEW SOUTH (2015); ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL (2018); ANDREA J. RITCHIE, INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR (2017); LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY (2009); NEIL WEBSDALE, POLICING THE POOR: FROM SLAVE PLANTATION TO PUBLIC HOUSING (2001); Bruce Western & Katherine Beckett, *How Unregulated Is the U.S. Labor Market? The Penal System as a Labor Market Institution*, 104 AM. J. SOC. (1999).

safety. Scholars and legislative supporters have noted their arbitrariness,[299] but there is more to unearth.

The arbitrariness of police quotas is highlighted by their overinclusive and underinclusive nature. Unreasonably high quotas can extract officers' time and prevent them from addressing more serious threats that, if attended to, could lead to greater public safety benefits.[300] When quotas are low, as supporters claim, public safety benefits are questionable.[301] A quota of two arrests every six weeks led one cop to offer the following query: "Suppose the officer makes two arrests the first two weeks? What does he do the next four?"[302] If the productivity rationale governs, the officer could technically coast. Ultimately, the productivity defense for quotas is rife with incoherence. It can be irresponsive to public safety by serving as a distraction from more serious criminal wrongdoing. This rationale can also be insensitive to public safety by only scratching the surface of illegality and allowing officers to satisfy a minimal threshold quota that may not correspond with actual criminal offending.

### *3. Thin Evaluations*

It is undeniable that law enforcement leadership needs some method to evaluate officers, but quotas are subpar instruments for such assessments. Critics of quotas inside and outside of law enforcement have taken the laziness rationale and deployed it against supervisors, with one online commenter arguing that "[q]uotas are management's lazy attempt to make a very few lazy employees pick up the pace."[303] But a simpler, less loaded critique is available: Quotas poorly capture the qualitative dimensions of policing and misguidedly

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299 *See, e.g.*, Bronstein, *supra* note 21, at 545; Mitch Smith, *New Law Bans Police Use of Ticket Quotas*, CHI. TRIB. (June 16, 2014), https://www.chicagotribune.com/news/ct-xpm-2014-06-16-chi-quinn-signs-into-law-bill-banning-police-ticket-quota-20140615-story.html (noting support for Illinois's quota statute and quoting one legislator who stated, "Arbitrary quotas on the number of tickets that have to be issued by police officers undermines the public trust in the police departments' priorities . . . [b]y eliminating these quotas, we can restore that trust and ensure that police officers are free to do their job protecting the public").

300 David I. Dewar, *Goal Displacement*, *in* ENCYCLOPEDIA OF PUBLIC ADMINISTRATION AND PUBLIC POLICY 193, 196 (David Andrew Schultz & James A. Beverly eds., 2004).

301 *See id.*

302 Athelia Knight & Benjamin L. Weiser, *Street Cops*, WASH. POST (July 12, 1982), https://www.washingtonpost.com/archive/politics/1982/07/12/street-cops/68359866-8b67-4514-a6a2-3aa39b4a1b38.

303 Stephen Cain, Comment to *Ticket Quota for Ypsilanti Police Officers Is Illegal, Arbitrator Finds*, ANN ARBOR NEWS (Feb. 5, 2010, 6:04 AM), http://www.annarbor.com/news/ticket-quota-for-ypsilanti-police-officers-is-illegal-arbitrator-finds.

privilege quantity. The insights of criminologist Malcolm Sparrow are helpful here. Professor Sparrow writes:

> Some departments set targets for functional outputs, including enforcement activities such as arrests, stops, searches and traffic citations. This . . . should never be the default position or become normal practice. If you want quality work from a carpenter, it makes no sense to demand that he or she drill a certain number of holes or hammer a quota of nails. The essence of craftsmanship involves mastery of all the tools and the ability to select among them based on a clear understanding of the specific task in hand. Functional quotas make little sense in this context.[304]

The obsession with quantity sacrifices a long list of qualitative concerns that are relevant to policing, namely good judgment, fairness, reasonableness, and legality.[305] Defenders of quotas may point to statutes that prohibit exclusive consideration of citations and arrests and require evaluations to be holistic. Nevertheless, the constellation of case law, settlements, officer testimony, and media accounts described in this Article suggests that, at a bare minimum, holistic evaluation of police is not a typical practice.[306]

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304 Sparrow, *supra* note 34, at 18.

305 *Id.* at 18–20; *see also* Floyd v. City of New York, 959 F. Supp. 2d 540, 601 (S.D.N.Y. 2013) ("For the purposes of performance review, an unconstitutional stop is no less valuable to an officer's career than a constitutional one—because the two are indistinguishable."); Tracey L. Meares, *The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing—And Why it Matters*, 54 WM. & MARY L. REV. 1865, 1875–80 (2013) (describing rightful policing, which focuses on the fairness of police conduct, as opposed to the traditional emphases on lawful or efficient policing). The obsession with numbers is not unique to policing: Scholars have criticized how prosecutors, too, overemphasize convictions and their win-loss records at the expense of fair criminal justice outcomes. *See* Stephanos Bibas, *Prosecutorial Regulation Versus Prosecutorial Accountability*, 157 U. PA. L. REV. 959, 992, 987 (2009) (suggesting that "prosecutors view their jobs as maximizing convictions" and, along the lines of Professor Sparrow, noting how "conviction statistics ignore other important outcomes, such as declinations, sentences, and victim satisfaction"); Rachel E. Barkow, *Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 STAN. L. REV. 869, 883 (2009) ("Prosecutors may feel the need to be able to point to a record of convictions and long sentences if they want to be promoted or to land high-powered jobs outside the government."); Angela J. Davis, *The American Prosecutor: Power, Discretion, and Misconduct*, 23 CRIM. JUST. 24, 28 (2008) (remarking that most of the prosecutors the author, a criminal procedure scholar and former director of the D.C. Public Defender Service, engaged with "seemed to focus almost exclusively on securing convictions, without consideration of whether a conviction would result in the fairest or most satisfactory result for the accused or even the victim").

306 STAMPER, *supra* note 22, at 3 ("In fact, many supervisors believe that counting and recapping activity is the only way to evaluate police performance.").

*4. Tradeoffs and Revenue-Based Defenses*

Finally, it should go without saying that the police should not be tasked with generating revenue. Though such a normative claim may seem obvious, it chafes against the entrepreneurial realities of American policing. "Economic sanctions," Beth Colgan explains, "constitute the most common form of punishment in the United States."[307] If the profit-based defense of police quotas rests on a question of tradeoffs—that is, tickets allow localities to generate revenue when they cannot raise taxes—then the tradeoffs at least need to be named and assessed.

Fortunately, empiricists are beginning to name the costs of for-profit policing. Many of their studies focus on the disproportionate racial effects of policing for profit.[308] But even when measured only in terms of the public-safety purpose of policing, quotas come with considerable costs. Rebecca Goldstein and her colleagues have studied how municipal reliance on fees, fines, and forfeitures, as opposed to taxes, produce "undesirable outcomes that may not have been anticipated by policymakers aiming simply to cover a revenue shortfall."[309] Relying on census data that collected the revenue and expenditure data of approximately 90,000 local governments, they found that reallocating police resources to money-generating activity was "associated with neglect of other important police functions, namely, the investigation of violent crimes."[310] This revenue-based orientation ultimately "compromises their ability to perform their traditional functions."[311] According to the study, a one percent increase in the share of revenues from fees, fines, and forfeitures is associated with a 3.7 per-

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307 Beth A. Colgan, *Beyond Graduation: Economic Sanctions and Structural Reform*, 69 DUKE L.J. 1529, 1537 (2020).

308 *See generally*, Akheil Singla, Charlotte Kirschner & Samuel B. Stone, *Race, Representation, and Revenue: Reliance on Fines and Forfeitures in City Governments*, 56 URB. AFFS. REV. 1132 (2020); Allison P. Harris, Elliott Ash & Jeffrey A. Fagan, *Fiscal Pressures and Discriminatory Policing: Evidence from Traffic Stops in Missouri*, 5 J. RACE, ETHNICITY, & POL. 450 (2020), https://doi.org/10.1017/rep.2020.10; Kelsey Shoub, Leah Christiani, Frank R. Baumgartner, Derek A. Epp & Kevin Roach, *Fines, Fees, Forfeitures, and Disparities: A Link Between Municipal Reliance on Fines and Racial Disparities in Policing*, 0 POL'Y STUD. J. 1 (Aug. 7, 2020), https://doi.org/10.1111/psj.12412.

309 Rebecca Goldstein, Michael W. Sances & Hye Young You, *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, 56 URB. AFFS. REV. 5, 24 (2018); *see also* Michael D. Makowsky & Thomas Stratmann, *Political Economy at Any Speed: What Determines Traffic Citations?*, 99 AM. ECON. REV. 509, 510 (2009) (finding in empirical study that "the likelihood and dollar amounts of fines [for speeding tickets] are decreasing functions of local property tax revenue" and also that "the likelihood of receiving a speeding fine is higher in towns that are in a fiscal crunch caused by a rejected increase in the property tax limit").

310 *Id.*

311 *Id.*

centage point decrease in the clearance rate for violent crimes.[312] Economist Anna Harvey has similarly concluded that "fiscal incentives can distort the allocation of law enforcement effort[s]" in ways that have distributional consequences for public safety.[313] Notwithstanding empirical work that highlights the compromising cost of profit-based policing, there are a host of other constituent-specific problems with police quotas.

### *C. Additional Objections*

It is essential to not let defenses of quotas and counterarguments to them totally consume how quotas are understood. This subsection offers a series of additional reasons why quotas constitute lousy policy. To highlight the unique possibility for building consensus on prohibiting quotas, this subsection focuses specifically on three constituents: law enforcement, the general public, and racial minorities.

#### *1. Law Enforcement Objections*

Police officers and police unions have been some of the most prominent opponents of quotas. Two criticisms often offered by unions stand out. The first concerns how quotas curtail the discretion of officers.[314] Patrick Lynch, head of the Police Benevolent Association, the police union for the NYPD, has been vocal on this issue. In an op-ed that was relatively dismissive of the racial dimensions of police-citizen encounters, Lynch argued that quotas were the source of New York City's policing woes.[315] Such requirements, he complained, "risk turning officers into automatons."[316] The Illinois Fraternal Order of Police Labor Council, which supported Illinois's quota statute, echoes a similar sentiment on its website, stating that "[q]uotas turn police officers into tax collection machines instead of

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312 *Id.*

313 Anna Harvey, *Fiscal Incentives in Law Enforcement*, 22 AM. L. & ECON. REV. 173, 173 (2020). In his support for Illinois's statute, Chicago State Senator Bill Cunningham relevantly noted, "Policing should not be used as a revenue enhancement strategy by municipalities. . . . Officers will no longer be distracted from their regular law enforcement duties in order to meet ticket quotas." *See Cunningham Bill Signed into Law*, BEVERLY REV. (Aug. 28, 2018), https://www.beverlyreview.net/news/community_news/article_618a47fe-aae8-11e8-9a28-872a66178e5c.html; *see also* Michael D. Makowsky, Thomas Stratmann & Alex Tabarrok, *To Serve and Collect: The Fiscal and Racial Determinants of Law Enforcement*, 48 J. LEGAL STUD. 189, 189 (2019) (finding in empirical study "that revenue-driven law enforcement can distort police behavior and decision-making, . . . altering the quantity, type, and racial composition of arrests").

314 *See* Bronstein, *supra* note 21, at 550.

315 Patrick J. Lynch, *The Real Fix for Stop-and-Frisk*, N.Y. DAILY NEWS (Oct. 7, 2013, 4:20 AM), https://www.nydailynews.com/opinion/real-fix-stop-and-frisk-article-1.1476893.

316 *Id.*

professional law enforcement officers. It distracts police officers in the exercise of their day-to-day law enforcement activities."[317]

Quotas are legal in Arizona, but the Tucson Police Officers Association has advocated for a statutory prohibition. Jason Winsky, government affairs director for the union, declared, "We're just philosophically opposed to any kind of quota . . . . It's a morale issue for us because the officer no longer has discretion."[318] In Washington, where quotas are also legal, retired Spokane police officer and Washington State Senator Jeff Holy sponsored a bill prohibiting the practice.[319] For Holy, "[a]n officer's ability to make an independen[t] decision allows them to apply the level of enforcement action they believe to be appropriate for the situation. An officer being *directed* to apply enforcement action to comply with an employer policy or ticket quota reflects badly on law enforcement."[320] These discretion-based objections are organized around the belief that quotas lead officers to be ruled by numbers instead of common-sense judgment.

Curtailed discretion bleeds into the second major criticism offered by police: that quotas limit the scope of their work. This critique works in two different directions. On one end is a concern that quotas prevent officers from attending to more serious crimes. Quantitative studies of law enforcement priorities lend support to this idea.[321] On the other end is a concern that quotas disincentivize police from engaging in socially beneficial activity that is less penal and harder to quantify. "If I break up a fight between two boys and send them home, I don't get credit," an officer explained.[322] "If I help deliver a baby in an emergency, I get no credit. But I score points if I issue a seat belt summons . . . ."[323]

When quotas distract from serious crimes and preclude the ostensible services that law enforcement holds itself out as offering (officers

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317 Brenda Schory, *New Law to End Ticket Quotas; Locally, Most Local Police Agencies Say They Never Had Them Anyway*, KANE CNTY. CHRON. (July 31, 2014, 10:48 PM), https://www.kcchronicle.com/2014/07/29/new-law-to-end-ticket-quotas-most-local-police-agencies-say-they-never-had-them-anyway/afzdt5z.

318 Yoohyun Jung, *Police Union Calls for Elimination of Traffic-Ticket Quota*, ARIZ. DAILY STAR (Oct. 9, 2014), https://tucson.com/news/blogs/police-beat/police-union-calls-for-elimination-of-traffic-ticket-quota/article_2cde50a7-10a0-5e18-8908-7335510ce811.html.

319 *New WA Bill Would Discourage Traffic-Ticket Quotas for Officers*, MYNORTHWEST (Feb. 17, 2020, 2:44 PM), https://mynorthwest.com/1723060/ticket-quotas-officers-washington.

320 *Senate Passes Holy Bill that Seeks to Discourage Traffic-Ticket Quotas for Officers*, WASH. STATE SENATE REPUB. CAUCUS (Feb. 17, 2020) (emphasis added), https://jeffholy.src.wastateleg.org/tag/sen-jeff-holy.

321 *See supra* text accompanying notes 309–13.

322 POLICE REFORM ORG. PROJECT, *supra* note 14, at 3.

323 *Id.*

pledge to protect and *serve*), the nature of police work narrows, and public safety is compromised. Of course, quotas are not diametrically opposed to public safety, but they create scenarios where the public safety objective is deprioritized. Adherence to quotas leads police officers to be more concerned about obtaining a reward or avoiding a penalty.[324] Many officers are unbothered by this state of affairs and play the numbers game, but some disapprove. Their objections supply a powerful internal critique.

It is critical to understand that police unions are not typically torchbearers of criminal justice reform. In many ways, they have impeded reform.[325] As organizations tasked with ensuring optimal work conditions for their members, union concerns about quotas are far from selfless. Officers who protest quotas in their individual capacities typically do so as a response to employment grievances rather than altruistic civil rights concerns. These sobering realities do not, however, mean that the police's insights on quotas are bankrupt. In fact, their complaints are consonant with scholarly observations and warrant meaningful consideration.

### *2. Racial Vulnerability*

Vulnerability to violent police encounters, and the racial subjugation that has been a feature of policing, make racial minorities foreseeable critics of quotas. This opposition is well warranted. Officers have confessed to using racial minorities to fulfill their quotas and pad their statistics.

In New Jersey, one officer described quota compliance as a sport that took place in minority communities. "Guys were going out. They were competing for how many tickets each guy could get," he revealed.[326] "They're saying they're going out hunting. You go to traffic court and you see the impact. 90% of the people you see there are blacks and latinos."[327] The practice of "hunting" occurred in New York, too. In an affidavit in one of many cases involving police quotas, former NYPD officer Christopher LaForce said that he had decided

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[324] Molly Davis, *Why the Utah Legislature Banned Police Quotas*, LIBERTAS INST. (Mar. 19, 2018), https://libertasutah.org/op-eds/why-the-utah-legislature-banned-police-quotas.

[325] *See* Benjamin Levin, *What's Wrong with Police Unions?*, 120 COLUM. L. REV. 1333, 1340–46 (2020) (describing the critiques of police unions); Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 747–56 (2017) (discussing how police unions have been obstacles to criminal justice reform); Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191, 1191 (2017) (arguing that internal disciplinary procedures developed by police unions during the collective bargaining process can hinder criminal justice reform).

[326] Wallace, *supra* note 44.

[327] *Id.*

to retire because of the fatigue that quota-inspired racial profiling induced. "I got tired of hunting Black and Hispanic people because of arrest quotas," he complained.[328] In addition to civilians, quotas also impact minority officers. These officials, who some hold out as a solution to racist policing, are sometimes forced to comply with a practice that facilitates discrimination and jeopardizes police relations with minority communities.[329] Additional empirical evidence suggests that minorities bear the brunt of the kinds of revenue-based policing that sometimes informs quota regimes.

On the federal level, Immigration and Customs Enforcement (ICE) has long had formal arrest quotas that impact the undocumented population and the predominantly Latinx community that is subject to ICE raids.[330] The Department of Justice's investigation into the City of Ferguson led it to conclude that "[F]erguson's police and municipal court practices both reflect and exacerbate existing racial bias," and specifically recommended that the Ferguson Police Department "[p]rohibit the use of ticketing and arrest quotas, whether formal or informal."[331]

The vulnerability of racial minorities to being targeted by quotas can lead to unnecessary, and sometimes violent, contact with the police. Recall that South Carolina passed its quota statute in response to a police officer's killing of Walter Scott, an unarmed Black man. The defense team argued that the encounter stemmed from the officer's attempt to fulfill his department-mandated quota of three minor violations every shift.[332] A desire to decrease unnecessary police and citizen contact also motivated Tennessee's recent quota

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328 Joseph Goldstein & Ashley Southall, *'I Got Tired of Hunting Black and Hispanic People*,' N.Y. TIMES (June 17, 2020), https://www.nytimes.com/2019/12/06/nyregion/nyc-police-subway-racial-profiling.html.

329 *See id.*; CRIME + PUNISHMENT, *supra* note 68; Sklansky, *supra* note 259 (discussing how the diversification of police departments affects their relationships with the communities they serve).

330 *See* Diaz-Bernal v. Myers, 758 F. Supp. 2d 106, 114 (D. Conn. 2010); Nathan Treadwell, *Fugitive Operations and the Fourth Amendment: Representing Immigrants Arrested in Warrantless Home Raids*, 89 N.C. L. REV. 507, 560–61 (2011); Michael J. O'Brien, *"Widespread" Uncertainty: The Exclusionary Rule in Civil-Removal Proceedings*, 81 U. CHI. L. REV. 1883, 1898–99 (2014).

331 Ferguson Report, *supra* note 17, at 2, 91.

332 Cynthia Roldan, *Ticket Quota Limit Proposal for Law Enforcement Heads for Senate Floor*, POST & COURIER (Nov. 2, 2016), https://www.postandcourier.com/politics/ticket-quota-limit-proposal-for-law-enforcement-heads-for-senate/article_14f44c11-d0f2-57c0-91b1-69b23bd536c8.html.

statute,[333] which levies criminal fines on law enforcement officials who impose quotas.[334]

A pause is necessary here, lest causal mechanisms get confused. Quotas do not cause police brutality and killings. Rogue officers and legal cultures of impunity are better explanations. But quotas can create the conditions for violent or even lethal interactions. Quotas figured prominently in an almost 200-page decision where a federal judge painstakingly described how the NYPD maintained a racist stop-and-frisk policy that flouted constitutional rules.[335] That policy encouraged officers to "crush the fucking city," and indiscriminately stop Black and Latinx people without any legal reason because they "'can always articulate' some basis for a stop after the fact."[336] Testimonies given to the Center for Constitutional Rights, which litigated the Floyd case, described how stops often resulted in excessive use of force by police against minorities who were slapped, thrown against walls, tasered, and brutalized.

Moreover, quotas subject racial minorities to police interactions that are often devoid of legal remedies and exacerbate their marginalization. Devon Carbado's insights into the relationship between racial vulnerability and police misconduct are clarifying. "The more vulnerable a group is to predatory policing, the greater that group's police contact and thus the greater the exposure to the possibility of violence."[337] Such predation "trades on and compounds the marginalization of an already marginalized group" and "facilitates police violence by increasing the frequency [of minority contact] with the police."[338]

An intersectional analysis further reveals how quotas exacerbate social inequality and make marginalized groups easy targets for police misconduct. Women of color, low-income people, and members of the LGBTQ community are particularly susceptible to being targeted by quota-fulfilling police officers. Police whistleblower Adhyl Polanco explains:

> [W]hen you go hunting, when you put any type of numbers on a police officer to perform, we are going to go for the most vulnerable. Of course, we're going to go for the LGBT community, we're

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333 *See* Arnold, *supra* note 95.

334 Act of July 15, 2020, ch. 801, 2020 Tenn. Pub. Acts, https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf.

335 Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

336 *Id.* at 598–99.

337 Devon W. Carbado, *Predatory Policing*, 85 UMKC L. REV. 545, 561 (2017).

338 *Id.*

> going to the black community, we're going to those that have no vote, that have no power.[339]

Quotas exacerbate social vulnerability and make marginalized groups easy targets for police misconduct. When set against the larger context of police corruption, the predatory nature of quotas demonstrates why the practice constitutes bad policy.

### *3. The General Significance of Quotas*

Police quotas should concern the general population. Some people may be undisturbed or feel unaffected by the problems police quotas invite either because they occupy a demographic group that is not a posterchild for mass incarceration or because they imagine themselves as law-abiding and invulnerable to quota-based policing. Criminal law theorist Doug Husak invites skepticism of such beliefs.[340] He observes that "[o]ffenses are so far-reaching that almost everyone has committed one or more at some time or another; the criminal law no longer distinguishes 'us' from 'them.'"[341] Going a step further, Professor Husak estimates that "over 70% of living adult Americans have committed an imprisonable offense at some point in their life."[342] Thus, the average person should be concerned about quotas because they likely engage in activities that come under the purview of this kind of policing.

Quotas can also lead to routine violations of constitutional rights and civil liberties. An officer who is forced to comply with a quota "will find it difficult to be sympathetic to procedural due process guidelines which stand in the way of filling his quota."[343] In addition to due process issues, quotas invite equal protection problems, implicate Fourth Amendment issues related to unconstitutional police stops, and raise First Amendment concerns involving a police officer's ability to speak out about quotas without fear of retaliation. Constitutional problems with quotas have arisen in large, diverse metropolitan areas like New York, Chicago, and Los Angeles as well as small cities like Mount Enterprise, Texas (with a population of approximately 450

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339 Sarah Wallace, *More NYPD Officers Say There's Proof of Quota-Driven Arrests*, NBC N.Y. (Apr. 1, 2016, 8:48 PM), https://www.nbcnewyork.com/news/local/nypd-officers-arrest-quota-exclusive-interview-pressure-numbers.

340 *See* DOUGLAS HUSAK, OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW 24 (2008).

341 *Id.*

342 *Id.*

343 Albert T. Quick, *Attitudinal Aspects of Police Compliance with Procedural Due Process*, 6 AM. J. CRIM. L. 25, 31 (1978).

people) and racially homogenous states like Utah (approximately ninety percent white).[344]

James Spadola, a former Delaware officer who has advocated for anti-quota legislation in his state, argues that "quotas transform civilians into a performance measure and potential arrest statistic, as opposed to an American with constitutional rights and protections that should be served and protected by the police."[345] The availability of more sanitized euphemisms (e.g., performance standards, targets, activity) and the lack of rigorous investigations into quotas keep the general public from realizing how common they are in law enforcement. In a country that is only beginning to understand the problems of over-policing, quotas are a poorly understood practice that compromise an already fragile body of constitutional law.

For conservatives and liberals who believe that the police serve a public safety function, quotas are distortive and jeopardize the legitimacy of law enforcement. These distortive features may be of particular concern to law-and-order conservatives. John Eterno, a criminologist who spent two decades as an officer and retired as a captain in the NYPD, explains how quotas pervert police goals in his book *The Crime Numbers Game: Management by Manipulation*.[346] Eterno and his co-author Eli Silverman (also a criminologist) argue that quotas encourage police to focus on less difficult crimes "at the expense of more significant and arduous arrests."[347] In a society where consensual crimes like drug trafficking leave no discernible complainant, murders often go unsolved, sexual assault is underreported, and white-collar crimes go unpunished. This should be a cause of concern for fiscal conservatives, law-and-order advocates, and supporters of victims' rights.

Deeper questions of legitimacy also abound, as quotas undermine liberal concerns about procedural justice and the rule of law. Laurie Robinson, who was responsible for developing recommendations after the Department of Justice's Ferguson investigation, explained how quotas and numbers-policing can shape public opinion: "If citizens believe that tickets are being issued or arrests are being made for rea-

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344 *Mount Enterprise, Texas Population 2020*, WORLD POPULATION REV., https://worldpopulationreview.com/us-cities/mount-enterprise-tx-population (last visited Jan. 9, 2020); *Utah Population 2020*, WORLD POPULATION REV., https://worldpopulationreview.com/states/utah-population (last visited Dec. 20, 2020).

345 James Spadola, *Delaware Should Ban Police Quotas*, DEL. ONLINE (July 28, 2017, 11:45 AM), https://www.delawareonline.com/story/opinion/contributors/2017/07/28/delaware-should-ban-police-quotas-james-spadola/519661001.

346 JOHN A. ETERNO & ELI B. SILVERMAN, THE CRIME NUMBERS GAME: MANAGEMENT BY MANIPULATION (2017); *see also* Bronstein, *supra* note 21, at 555–56.

347 ETERNO & SILVERMAN, *supra* note 346, at 11.

sons other than the goal of law enforcement," she contends, "then their trust in the legitimacy of the system is really eroded."[348] Others have echoed this view.[349] As liberal reformers and some conservative allies work to repair a criminal justice system riddled with imperfections, they need to address how quotas influence internal enforcement priorities and shape public conceptions of fairness.

Skeptics of incremental criminal justice reform—a group in which I find membership—may believe that reforming the practice of police quotas fails to confront the incorrigible nature of American policing. The strongest version of this critique would likely come from abolitionists who resist reformist reforms that tinker at the edges of the criminal justice system, as opposed to non-reformist reforms, which "have as their end goal the eventual dismantling of that system and are understood to be individual elements or steps in a larger strategy of structural transformation."[350] This is a valid concern. Eliminating police quotas cannot solve the problems of white supremacy and poverty management that are central to the criminal justice system, but there are at least three reasons why abolitionists and radicals should care about police quotas. These reasons are theoretical, tactical, and temporal.

First, addressing the problem of quotas can be an important interim step toward reducing the imprint of the penal state, which is one goal of abolitionism.[351] Enforcing quota statutes and stamping out the practice elsewhere could shift the police away from understanding civilians as "stats to be harvested" and reduce unnecessary police encounters.[352] Taken one step forward, addressing quotas could also turn out to be especially necessary if the previously unorthodox, but increasingly recognizable, goal of defunding the police is achieved.[353] There is a strong reason to believe, based on the Camden example,

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348 Joel Rose, *Despite Laws and Lawsuits, Quota-Based Policing Lingers*, NPR (Apr. 4, 2015, 4:47 AM), https://www.npr.org/2015/04/04/395061810/despite-laws-and-lawsuits-quota-based-policing-lingers.

349 *See* Smith, *supra* note 299; Jonathan Banks, *Thing Blue Lies: How Pretextual Stops Undermine Police Legitimacy*, 66 CASE W. RSRV. L. REV. 931 (2016).

350 Marina Bell, *Abolition: A New Paradigm for Reform*, LAW & SOC. INQUIRY 1, 14 (2000).

351 *See, e.g.*, *Abolition Can't Wait*, 8 TO ABOLITION, https://www.8toabolition.com/why (last visited Jan. 9, 2020); Dan Berger, Mariame Kaba & David Stein, *What Abolitionists Do*, JACOBIN (Aug. 24, 2017), https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration.

352 *The Big Reason Tampa Police Write So Many Tickets: They're Told To*, TAMPA BAY TIMES (Dec. 16, 2015), https://www.tampabay.com/news/publicsafety/crime/theres-a-big-reason-tampa-police-write-so-many-tickets/2252912.

353 *See* Peter Simek, *What 'Defunding' the Dallas Police Department Could Look Like*, D MAG. (June 12, 2020, 11:14 AM), https://www.dmagazine.com/frontburner/2020/06/what-defunding-the-dallas-police-department-could-look-like.

that quotas could become more prominent in police forces with reduced personnel.[354]

Finally, quotas speak directly to an emerging discourse about the *purpose* of police. As this Article has shown, quota-based policing applies sharp pressure to common-sense assumptions about the public safety, crime-fighting conception of law enforcement. Attacking quotas—which have demonstrable connections to financial exploitation and racial subjugation—is at least consonant with the abolitionist insistence on rethinking punishment and reimagining the state's relationship to vulnerable communities and the general population.

## IV
## Normative Paths Forward

What is one to do with these descriptive and definitional insights? This Part offers some recommendations on how to curb police quotas. Before beginning, I want to stress two things. First, any solution to the problem of police quotas cannot be strictly legal. A gauntlet of obstacles—white supremacy,[355] some jurisdictions' narcotic addiction to profit-based policing,[356] judicial hostility to the enforcement of civil rights in federal courts,[357] and many others—are too mountainous for any set of neat positive law or policy prescriptions. Any attempt to curb quotas must be multi-pronged and multi-disciplinary.

Second, I do not try to propose *better* mechanisms for evaluating or incentivizing the police. I resist that normative move because it has already been taken up by criminologists[358] but more importantly because strategies for better policing dangerously invert the analysis. Almost half of American states have legislatively determined that police quotas are impermissible, and a few others have pending bills. The crucial normative issues are not about substitute incentives or evaluation metrics, but instead about how existing statutory schemes can be improved and how they can be introduced to jurisdictions that have not yet recognized the imprudence of police quotas.

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354 *See supra* text accompanying notes 177–88; Fussell, *supra* note 31; Rushin & Michalski, *supra* note 30.

355 *See* FBI, White Supremacist Infiltration of Law Enforcement 4 (2006), https://s3.documentcloud.org/documents/402521/doc-26-white-supremacist-infiltration.pdf; Vida B. Johnson, *KKK in the PD: White Supremacist Police and What to Do About It*, 23 Lewis & Clark L. Rev. 205, 211 (2019).

356 *See* Maciag, *supra* note 5.

357 *See supra* note 136 and accompanying text.

358 *See* Sparrow, *supra* note 34; Nat'l Inst. of Just., Perspectives on Research and Evidence-Based Policing 15–20 (2020); Gul & O'Connell, *supra* note 13, at 51–98.

### *A. A Prospective Research Program*

Legal scholars must scrutinize police quotas as a critical component of the criminal justice system and as a practice that interacts with other areas of law. Police quotas matter because they animate and intersect with issues that legal scholars wrestle with, wrangle over, and consider to be fundamental to ideas about quality and justice. Traditionally, legal scholars have relinquished the study of quotas to criminologists who have a different set of intellectual interests and commitments. Instead of engaging directly with quotas, legal scholars have either overlooked them, subsumed them within other categories (e.g., broken windows policing), or given no more than pat acknowledgment of their existence. This Article supplies a framework for understanding how police quotas work, how they are defended, and why they are indefensible, but these formulations are only initial steps.

The demonstrated existence of police quotas abrades core understandings of criminal law and constitutional procedure. What does it mean when criminalization is not a product of wrongdoing, but is instead spawned by police attempts to thwart employment sanctions or garner occupational rewards? On the procedural side, the existence of race-based police quotas has been verified by federal courts, police officers, and sponsors of legislative prohibitions. How can this reality be reconciled with our country's frail Equal Protection jurisprudence[359] or with an exception-riddled Fourth Amendment[360] that makes satisfying quotas at the expense of minorities fairly straightforward?

For civil rights scholars, litigation involving police quotas highlights the disparity between actual government practices and stingy judicial interpretations of what constitutes a custom or policy under § 1983. Civilians are not the only aggrieved subjects of quota-based policing. Most of the relevant statutes are about work conditions. Criminal justice scholars are increasingly devoting their attention to labor law and employment law, and police quotas fit neatly into such considerations.[361] Examining the issue of police quotas may provide a new entry point into thinking about live controversies in criminal justice administration and civil rights more generally.

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[359] *See* Russell K. Robinson, *Unequal Protection*, 68 STAN. L. REV. 151, 154 (2016) (discussing how "the Supreme Court has steadily diminished the vigor of the Equal Protection Clause").

[360] *See* RIC SIMMONS, SMART SURVEILLANCE: HOW TO INTERPRET THE FOURTH AMENDMENT IN THE TWENTY-FIRST CENTURY 174 (2019).

[361] *See supra* text accompanying note 324.

Quotas also showcase intragovernmental tensions that matter to local government law scholars and legislative experts. In states where they are prohibited, law enforcement leadership often imposes quotas to demonstrate productivity.[362] Scholars who study how governments work could provide fruitful insights on how to enforce anti-quota statutes and how to counteract pathologies that stand in the way. Tax law scholars could also help clarify the relationship between local tax policy and policing for profit—which often serves as a substitute for increased taxing.[363] Police quotas are often the mechanisms for such "taxation by citation"[364] and make critical tax law scholars relevant interlocutors.[365]

Outstanding empirical questions remain. Besides litigation outcomes and settlements, scholars and the general public do not have any empirical data on the efficacy of quota statutes. It would be helpful to know how jurisdictions with prohibitions compare to jurisdictions where quotas are permissible. Scholars should examine how prohibitions affect a jurisdiction's incidence of police misconduct, the size of its misdemeanor docket, clearance rates, its reliance on legal financial obligations (e.g., fees and fines), and the satisfaction of its citizens. The results could help shed light on issues specific to criminal justice as well as broader questions at the intersection of law and inequality.

### *B. Investigative Agendas and Public Awareness*

The media should continue to play an important role in uncovering and publicizing the existence of police quotas. As Justice Brennan correctly observed, "[c]ommentary and reporting on the criminal justice system is at the core of First Amendment values, for the operation and integrity of that system is of crucial import to citizens concerned with the administration of government."[366] Interestingly, Justice Brennan's comments were in a decision that involved media reporting on a murder trial. This felony-centric, trial-oriented understanding of criminal justice does not represent the bulk of cases

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362 *See* NATAPOFF, *supra* note 298, at 59.

363 *See supra* notes 308, 312; Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 J. POLITICS 1090 (2017).

364 DICK M. CARPENTER, KYLE SWEETLAND & JENNIFER MCDONALD, INST. FOR JUST., THE PRICE OF TAXATION BY CITATION 5 (2019), https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf.

365 *See* Nancy J. Knauer, *Critical Tax Policy: A Pathway to Reform?*, 9 Nw. J.L. & SOC. POL'Y 206, 254 (2014); Anthony C. Infanti, *Tax Equity*, 55 BUFF. L. REV. 1191, 1196 (2008) (discussing the concept of tax equity and its applications).

366 Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 587 (1976).

that are currently churned through the system. Slapdash misdemeanor processing better approximates the criminal justice system.[367] Nevertheless, Justice Brennan's observations maintain relevance. Journalism still "contribute[s] to the public's understanding of . . . the . . . criminal justice system" and can address some of its failures.[368]

The task of local news outlets and investigative journalists is to look beyond trials and examine police conduct and practices. This is not a simple task, but our current political climate is ripe for such scrutiny. First, many news outlets are increasingly reexamining their longstanding fidelity to police accounts. They are more willing to disbelieve how police describe criminal justice administration.[369] This reconsideration is undoubtedly influenced by social protest movements and video evidence of brutality that often contradicts initial police accounts. This journalistic skepticism should apply to the longstanding insistence of police leaders that they do not administer quotas despite evidence suggesting otherwise.[370] Second, the current legal landscape will also enable journalistic investigation into police quotas. The Court's First Amendment jurisprudence, which generally does not protect officers from retaliation if they object to quotas in their employee capacity, essentially funnels their speech into the public sphere. Many of the litigated quota cases involve officers who leaked information to the media.[371] Finally, the general public's increasing recognition of the bias and brutality of American law enforcement is creating space for a more receptive audience to journalistic accounts of police quotas.[372]

Local news, mainstream media, and nonprofit investigative reporters are well-situated to more robustly examine police quotas. In places like Charleston, Rhode Island, and Damascus, Arkansas, media reporting on police quotas have led to the ACLU sending letters to all

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367 NATAPOFF, *supra* note 298 at 218 (describing the misdemeanor process, which represents the bulk of criminal justice cases, as "sloppy, inaccurate, unpredictable and disrespectful").

368 Nebraska Press Ass'n, 427 U.S. at 587.

369 *See* Paul Farhi & Elahe Izadi, *Journalists Are Reexamining Their Reliance on a Longtime Source: The Police*, WASH. POST (June 30, 2020), https://www.washingtonpost.com/lifestyle/media/journalists-are-reexamining-their-reliance-on-a-longtime-source-the-police/2020/06/30/303c929c-b63a-11ea-a510-55bf26485c93_story.html (discussing how some journalists are now unwilling to take the police's account of events "at face value").

370 *See supra* text accompanying notes 35, 240, 245.

371 *See* CRIME + PUNISHMENT, *supra* note 68; Rayman, *supra* note 120; Rayman, *supra* note 121; Rayman, *supra* note 122; Tracy Oppenheimer, *Auburn Cop Fired for Resisting Quotas Gets Online Support; City Officials Deny Deny Deny*, REASON (July 26, 2013, 10:45 AM), https://reason.com/2013/07/26/online-community-comes-to-whistle-blower.

372 *See* Cohn & Quealy, *supra* note 8.

police chiefs in the state reminding them of the illegality of quotas[373] and the loss of the right to issue tickets,[374] respectively. Mainstream news outlets like the socialist *Jacobin*,[375] the moderate *New York Times*,[376] the libertarian *Reason*,[377] and the conservative *Washington Examiner*[378] have all reported on police quotas and done so in unfavorable terms. The same is true for criminal justice-specific outlets such as *The Marshall Project*[379] and *The Appeal*.[380]

All of these organizations have the infrastructure to probe how police quotas operate. They know how to gather difficult-to-obtain documents and data like evaluation reports that demonstrate the existence of quotas and testimonial evidence.[381] Drawing from these sources, the media can shape public understanding by giving coverage to officers and civilians who have persuasive evidence that they have been governed by or subject to police quotas. Since, as discussed in Part II, many allegations of police quotas do not make it to courts or get quietly settled, journalistic accounts can be crucial to encouraging policy changes or legislative reform.

Reporters can also probe the connections between quotas and other pathologies. In states that do not have prohibitions on quotas, journalists—armed with a deeper understanding of how quotas operate—could examine how this practice is tied to police misconduct, policing for profit, and racial profiling. In states that have legislated against police quotas, reporters should consider these requirements within the larger category of police corruption that has been of interest to journalists. Overall, the public has traditionally understood

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373 Patrick Anderson, *RI ACLU to Police Departments: Traffic Ticket Quotas Are Illegal*, PROVIDENCE J. (Nov. 28, 2017, 4:38 PM), https://www.providencejournal.com/news/20171128/ri-aclu-to-police-departments-traffic-ticket-quotas-are-illegal.

374 Debra Hale-Shelton, *Arkansas Town's Bid to Lift Speed-Trap Sanctions Denied: Still Can't Write Tickets*, ARKANSAS DEMOCRAT-GAZETTE (May 17, 2018, 4:30 AM), https://www.arkansasonline.com/news/2018/may/17/damascus-bid-denied-still-can-t-write-t.

375 *See* Nick Tabor, *The Mayor Who Cracked Down on Baltimore*, JACOBIN (May 14, 2015), https://www.jacobinmag.com/2015/05/omalley-baltimore-clinton-democratic-primary-president.

376 *See* Goldstein et al., *supra* note 309.

377 *See* Oppenheimer, *supra* note 371.

378 *See* Editorial, *Arrests Should Be Based on Crimes, Not Quotas*, WASH. EXAMINER (June 6, 2006, 12:00 AM), https://www.washingtonexaminer.com/editorial-arrests-should-be-based-on-crimes-not-quotas.

379 Ken Armstrong, *How to Fix American Policing*, MARSHALL PROJECT (July 13, 2016, 10:00 PM), https://www.themarshallproject.org/2016/07/13/how-to-fix-american-policing.

380 *See* George Joseph, *NYPD Commander's Text Messages Show How the Quota System Persists*, APPEAL (Dec. 12, 2018), https://theappeal.org/nypd-commanders-text-messages-show-how-the-quota-system-persists.

381 *See* DAVID CUILLIER & CHARLES N. DAVIS, THE ART OF ACCESS: STRATEGIES FOR ACQUIRING PUBLIC RECORDS 114–26 (2011) (chronicling methods for handling evasive agency responses and noting the success of some news organizations' tactics).

the media as a government watchdog.[382] This oversight function is no different in the area of police quotas.

### *C. Statutory Reform*

The remaining issues concern getting quota provisions enacted in states without them and improving existing statutes. Enacting new statutes is simultaneously straightforward and challenging. It is straightforward because bipartisan support has already helped get quota bills passed in many states and objections to police quotas have been made by interest groups across the ideological spectrum. At the same time, getting quota statutes on the books is not easy, as demonstrated by the nine states that have drafted bills but have not been able to convert them to enacted legislation; some of these bills were drafted more than a decade ago.[383] Police chiefs and politicians worry that these bills will hamper their ability to evaluate officers.[384] The research and investigative agendas mentioned above could engender more public awareness, whereas intentional partnerships could move the legislative ball forward. South Carolina, Missouri, and Tennessee—all states that recently adopted statutes—did so by considering and representing that quotas impacted a cross-section of diverse interests.[385]

The other task is to shore up existing statutes. Most anti-quota laws have appreciable shortcomings, including ambiguity about whether they apply to informal requirements, and loopholes for stops and warnings. To this end, the Appendix includes the skeleton of a model statute addressing some of these shortcomings and collating the best features of existing legislation.[386] It is far from comprehensive since this Article cannot supply answers to critical questions about future implementation. But, it is a starting point for statutory amendments as well as consideration of new anti-quota laws.

The model statute also proposes an additional provision that is not found in existing quota statutes and requires explanation: Pension forfeiture should be a consequence of violating the statute. This may

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382 *See* JAMES L. AUCOIN, THE EVOLUTION OF AMERICAN INVESTIGATIVE JOURNALISM 12 (2005).

383 *See infra* Appendix B.

384 *See, e.g.*, N.J. STATE ASS'N OF CHIEFS OF POLICE, LEGISLATIVE POSITION PAPER: OPPOSITION TO S1105 / A2126 (2016), https://www.njsacop.org/Files/NJSACOP%20Position%20Paper%20-%20Opposition%20to%20S1105%20%20A2126.pdf (opposing amendments to state anti-quota law).

385 *See supra* Section I.B.

386 *See infra* Appendix C.

sound like an extraordinary ramification.[387] But many states already have laws that either revoke, reduce, or suspend the pensions of public employees who have been convicted of a felony[388] or any crime related to their public employment.[389] West Virginia's pension forfeiture law is arguably the most liberal, simply stating that "honorable service is a condition to receiving any pension, annuity, disability payment or any other benefit under a retirement plan."[390] The efficacy of quota statutes is still an open empirical question, but it is clear from the litigation discussed in Part II that police continue to implement police quotas even in states that prohibit them. Where judicial avenues for redress are limited, pension forfeiture can be a potential deterrent. The measure has been proposed by police abolitionists,[391] and economists have tentatively found that states with stronger pension forfeiture laws experience lower rates of police misconduct.[392] Adding a pension forfeiture provision could add teeth to existing statutes and help stamp out stubborn police quotas.

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387 James Jacobs and his colleagues have analyzed arguments for and against pension forfeiture and conclude that imprisonment and fines would be better sanctions. This suggestion might be subject to concerns about "progressive punitivism" that uses incarceration to advance social justice goals. Jacobs and his colleagues do suggest a model for pension revocation that would be less harsh than some states' schemes. *See* James B. Jacobs, Coleen Friel & Edward O'Callaghan, *Pension Forfeiture: A Problematic Sanction for Public Corruption*, 35 AM. CRIM. L. REV. 57, 89–91 (1997); Hadar Aviram, *Progressive Punitivism: Notes on the Use of Punitive Social Control to Advance Social Justice Ends*, 68 BUFF. L. REV. 199, 201–02 (2020).

388 *See, e.g.*, 40 ILL. COMP. STAT. ANN. 5/2-156 (West, Westlaw through P.A. 101-651); VA. CODE ANN. § 51.1-124.13 (West, Westlaw through 2020 Reg. Sess.); OHIO REV. CODE ANN. § 2929.192 (West, Westlaw through File 60 of 133d Gen. Assemb. 2019-2020); N.C. GEN. STAT. ANN. § 135-18.10 (West, Westlaw through S.L. 2020-97 of 2020 Reg. Sess.).

389 MASS. GEN. LAWS ANN. ch. 32, § 15(4) (West, Westlaw through ch. 226 of 2020 2d Ann. Sess.) ("In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance."); GA. CODE ANN. § 47-1-21(b) (West, Westlaw through 2020 Legis. Sess.) ("If a public employee commits a public employment related crime . . . in the capacity of a public employee and is convicted for the commission of such crime, such employee's membership in any public retirement system shall terminate on the date of final conviction and such employee shall not at any time thereafter be eligible for membership in any public retirement system."); *see also* ALASKA STAT. ANN. § 37.10.310 (West, Westlaw through ch. 32 of 2020 2d Reg. Sess.); ME. REV. STAT. ANN. tit. 5, § 17062 (West, Westlaw through 2019 2d Reg. Sess.); N.J. STAT. ANN. § 43:1-3.1(b)(17) (West, Westlaw through L.2020, c.127 & J.R. No.2); 43 PA. STAT. AND CONS. STAT. ANN. § 1313(a) (West, Westlaw through 2020 Reg. Sess. Act 95); 36 R.I. GEN. LAWS ANN. § 36-10.1-3 (West, Westlaw through ch. 79 of 2020 2d Reg. Sess.).

390 W. VA. CODE ANN. § 5-10A-1 (West, Westlaw through 2020 Reg. Sess.).

391 *See Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE, https://www.criticalresistance.org/wp-content/uploads/2020/08/CR_NoCops_reform_vs_abolition_REV2020.pdf (last visited Dec. 30, 2020).

392 *See* D. Bruce Johnsen & Adam David Marcus, *Pension Forfeiture and Police Misconduct*, 14 J.L. ECON. & POL'Y 1, 30 (2017).

## Conclusion

Although police quotas have escaped serious in-depth scrutiny, a diverse cross-section of the public rejects their use and believes that criminal sanctions should not be tied to law enforcement statistics or incentives. This Article provides descriptive insights into how police quotas work and why they are a pressing criminal justice issue. Moving forward, interim and long-term strategies must confront the reality that, across the country, quotas are a basic feature of policing.

## APPENDIX A. STATE STATUTES

| Statutory Prohibitions on Police Quotas | | |
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| State | Statute Title | Statute Overview |
| **Arkansas** | ARK. CODE ANN. § 12-6-302 (West, Westlaw through 2020 1st Extraordinary Sess. and 2020 Fiscal Sess.) | No state or local agency employing law enforcement officers engaged in the enforcement of any motor vehicle traffic laws of this state or any local ordinance governing motor vehicle traffic may establish any policy requiring any law enforcement officer to meet an arrest quota . . . . |
| **California** | CAL. VEH. CODE § 41602 (West, Westlaw through Ch. 372 of 2020 Reg. Sess.) | No state or local agency . . . may establish any policy requiring any peace officer or parking enforcement employees to meet an arrest quota. |
| **Connecticut** | CONN. GEN. STAT. ANN. § 7-282d (West, Westlaw through 2020 Reg. Sess.) Imposition of traffic ticket quotas prohibited | • No municipal police department may impose any quota with respect to the issuance of . . . summonses for motor vehicle violations upon any policeman in such department.<br>• "Quota" means a specified number of . . . summonses for motor vehicle violations to be issued within a specified period of time.<br>• Nothing in this section shall prohibit such department from using data concerning the issuance of . . . summonses in the evaluation of an individual's work performance provided such data is not the exclusive means of evaluating such performance. |
| **Florida** | FLA. STAT. ANN. § 316.640 (West, Westlaw through Ch. 184 of 2020 2d Reg. Sess.) | 8(b): A traffic enforcement agency may not establish a traffic citation quota. |
| **Illinois** | 20 ILL. COMP. STAT. ANN. 2610/24 (West, Westlaw through P.A. 101-651) State Police quotas prohibited | The Department may not require a Department of State Police officer to issue a specific number of citations within a designated period of time. |
| | 65 ILL. COMP. STAT. ANN. 5/11-1-12 (West, Westlaw through P.A. 101-651) Quotas prohibited | • A municipality may not require a police officer to issue a specific number of citations within a designated period of time. This prohibition shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs.<br>• A municipality may not, for purposes of evaluating a police officer's job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties.<br>• Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer's points of contact. |

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| **Louisiana** | LA. STAT. ANN. § 40:2401.1 (West, Westlaw through 2020 2d Extraordinary Sess.) Prohibition against quotas | No municipality or any police department . . . shall establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a law enforcement officer on the basis of the officer making a predetermined or specified number of any type or combination of types of arrests or require or suggest to a law enforcement officer, that the law enforcement officer is required or expected to make a predetermined or specified number of any type or combination of types of arrests within a specified period. |
| **Maryland** | MD. CODE ANN. PUB. SAFETY § 3-504 (West, Westlaw through 2020 Reg. Sess.) | (a) In this section, "quota" means the mandating of a finite number of arrests made or citations issued that a law enforcement officer must meet in a specified time period.<br>(b) A law enforcement agency may not: (1) establish a formal or informal quota for the law enforcement agency or law enforcement officers of the agency; or (2) use the number of arrests made or citations issued by a law enforcement officer as the sole or primary criterion for promotion, demotion, dismissal, or transfer of the officer.<br>(c) This section does not preclude a law enforcement agency from: (1) using quantitative data for arrests, citations, and other law enforcement activities as management tools or in evaluating performance; (2) collecting, analyzing, and applying information concerning the number of arrests and citations in order to ensure that a particular law enforcement officer or group of law enforcement officers does not violate an applicable legal obligation; or (3) assessing the proportion of the arrests made and citations issued by a law enforcement officer or group of law enforcement officers. |
| **Michigan** | MICH. COMP. LAWS ANN. § 257.750 (West, Westlaw through P.A. 2020, No. 256 of 2020 Reg. Sess.) | • A police officer shall not be required to issue a predetermined or specified number of citations for violations of this act or of local ordinances substantially corresponding to provisions of this act, including parking or standing violations.<br>• A police officer's performance evaluation system shall not require a predetermined or specified number of citations to be issued. |
| **Minnesota** | MINN. STAT. ANN. § 169.985 (West, Westlaw through 2020 Reg. Sess.) | A law enforcement agency may not order, mandate, require, or suggest to a peace officer a quota for the issuance of traffic citations, including administrative citations authorized under section 169.999, on a daily, weekly, monthly, quarterly, or yearly basis. |
| **Missouri** | MO. ANN. STAT. § 304.125 (West, Westlaw through 2020 2d Reg. Sess.) | No political subdivision or law enforcement agency shall have a policy requiring or encouraging an employee to issue a certain number of citations for traffic violations on a daily, weekly, monthly, quarterly, yearly, or other quota basis. This section shall not apply to the issuance of warning citations. |

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| **Nebraska** | NEB. REV. STAT. ANN. § 48-235 (West, Westlaw through end of 2020 2d Reg. Sess.) | A state agency or political subdivision shall not directly require a law enforcement officer employed by the state agency or political subdivision to issue a certain number or percentage of traffic citations, police citations, memoranda of traffic violations, memoranda of faulty equipment, or any other type of citation on any periodic basis. |
| **New Jersey** | N.J. STAT. ANN. § 40A:14-181.2 (West, Westlaw through L.2020, c.136 and J.R. No. 2) | • A State, county or municipal police department . . . shall not establish any quota for arrests or citations.<br>• The department or force shall not use the number of arrests or citations issued by a law enforcement officer as the sole criterion for promotion, demotion, dismissal, or the earning of any benefit provided by the department or force. |
| **New York** | N.Y. LAB. LAW § 215-a (McKinney, Westlaw through L.2019, ch. 758 and L.2020, chs. 1 to 387) Discrimination against employees for failure to meet certain ticket quotas | No employer or his or her duly authorized agent shall transfer or in any other manner penalize or threaten . . . based in whole or in part on such employee's failure to meet a quota . . . . |
| **North Carolina** | N.C. GEN. STAT. ANN. § 20-187.3 (West, Westlaw through S.L. 2020-97 of 2020 Reg. Sess.) Quotas prohibited | • The Secretary of Public Safety shall not make or permit to be made any order, rule, or regulation requiring the issuance of any minimum number of traffic citations, or ticket quotas . . . .<br>• Pay and promotions of members of the Highway Patrol shall be based on their overall job performance and not on the basis of the volume of citations issued or arrests made. |
| **Pennsylvania** | 71 PA. STAT. AND CONS. STAT. ANN. § 2001 (West, Westlaw through 2020 Reg. Sess. Act 95) | No political subdivision or agency of the Commonwealth shall have the power or authority to order, mandate, require or in any other manner, directly or indirectly, suggest to any police officer . . . that said police officer . . . shall issue a certain number of traffic citations, tickets or any other type of citation on any daily, weekly, monthly, quarterly or yearly basis. |
| **Rhode Island** | 31 R.I. GEN. LAWS 31-27-25 (West, Westlaw through ch. 79 of 2020 2d Reg. Sess.) Ticket quotas prohibited | • No state or municipal agency engaged in the enforcement of any motor vehicle traffic or parking laws of this state, or any local ordinance governing motor vehicle traffic or parking, may establish or maintain any policy, formally or informally, requiring any officer to meet a quota.<br>• "Quota" means any requirement regarding the number of arrests or investigative stops made, or summonses or citations issued, by an officer regarding motor vehicle traffic or parking violations.<br>• Nothing contained herein shall preclude a local or municipal agency from using data concerning arrests or investigative stops made, or summonses or citations issued, and their disposition in the evaluation of an officer's work performance, provided such data is not the exclusive means of evaluating such performance. |

| | | |
|---|---|---|
| **South Carolina** | S.C. CODE ANN. § 23-1-245 (West, Westlaw through 2020 Sess.) | • A law enforcement agency, department, or division may not require a law enforcement officer employed by the agency, department, or division to issue a specific amount or meet a quota for the number of citations he issues during a designated period of time.<br>• An employee of a law enforcement agency, department, or division who files a report with an appropriate authority alleging a violation of the provisions contained in this section is protected by the provisions contained in Chapter 27, Title 8. (D) As contained in this section: (1) "law enforcement agency, department, or division" includes, but is not limited to, municipal police departments, sheriff departments, the Highway Patrol, SLED, and other agencies that enforce state and local laws; (2) "quota" means a fixed or predetermined amount; (3) "points of contact" means a law enforcement officer's interaction with citizens and businesses within their jurisdictions and the law enforcement officer's involvement in community-oriented initiatives.<br>• Nothing in this section shall prohibit a law enforcement agency, department, or division from evaluating an officer's performance based on the officer's points of contact. |
| **Tennessee** | TENN. CODE ANN. § 39-16-516 (West, Westlaw through end of 2020 2d Extraordinary Sess.) Traffic offense citation quotas — Performance standards<br><br>Replaced by Act of July 15, 2020, ch. 801, 2020 Tenn. Pub Acts, https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf.<br>*See also* TENN. CODE ANN. § 50-1-304 (West, Westlaw through end of 2020 2d Extraordinary Sess.) (Whistleblower Act) | • A public official or employee shall not establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a law enforcement officer solely by the issuance of a predetermined or specified number of any type or combination of types of traffic citations.<br>• A public official or public employee shall not require or suggest to a law enforcement officer that the law enforcement officer is required or expected to issue a predetermined or specified number of any type or combination of types of traffic citations within a specified period.<br>• Nothing in this section shall prohibit a municipal corporation, a political subdivision or any agency of this state, from establishing performance standards for law enforcement officers that include issuance of traffic citations, but do not require issuance of a predetermined or specified number or any type or combination of types of citations as the sole means of meeting such performance standards. |

| | | |
|---|---|---|
| **Texas** | TEX. TRANSP. CODE ANN. § 720.002 (West, Westlaw through end of 2019 Reg. Sess.)<br>Prohibition on Traffic-Offense Quotas | • A political subdivision or an agency of this state may not establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a peace officer according to the officer's issuance of a predetermined or specified number of any type or combination of types of traffic citations . . . .<br>• A political subdivision or an agency of this state may not require or suggest to a peace officer, a justice of the peace, or a judge of a county court, statutory county court, municipal court, or municipal court of record . . . that the peace officer is required or expected to issue a predetermined or specified number of any type or combination of types of traffic citations within a specified period. |
| **Utah** | UTAH CODE ANN. § 77-7-27 (West, Westlaw through 2020 6th Spec. Sess.)<br>Quotas for arrest, citation prohibited | A political subdivision or law enforcement agency employing a peace officer may not require or direct that a peace officer meet a law enforcement quota. Subsection (2) does not prohibit a political subdivision or law enforcement agency from including a peace officer's engagement with the community or enforcement activity as part of an overall determination of the peace officer's performance. |
| **Wisconsin** | WIS. STAT. ANN. § 349.025 (West, Westlaw through 2019 Act 186)<br>Quotas relating to the enforcement of traffic regulations prohibited | No state agency or political subdivision of this state may require a law enforcement officer to issue a specific number of citations, complaints or warning notices during any specified time period for violations of traffic regulations. |

## APPENDIX B. STATE BILLS

| State Bills on the Prohibition of Police Quotas | | |
|---|---|---|
| State | Bill Title | Bill Overview |
| **Arizona** | H.R. 2410, 52d Leg., 1st Reg. Sess. (Ariz. 2015) | Prohibits municipalities, police departments, boards of supervisors, sheriffs and DPS from:<br>• implementing or establishing a traffic complaint quota for peace officers (officers) employed by a police department, sheriff's department or DPS;<br>• basing the determination of an officer's rank or classification on the number of traffic complaints the officer issues; or<br>• consider[ing] the number of traffic complaints an officer issues as a factor when determining the officer's rank or classification. |
| **Colorado** | S. 84, 67th Gen. Assemb., 2nd Reg. Sess. (Colo. 2010) | 16-2.5-311. Arrest Quotas.<br>• An employing agency may not establish any policy requiring any peace officer to meet an arrest quota.<br>• An employing agency may not use the number of arrests or citations issued by a peace officer as the sole criteria for promotion, demotion, reprimand . . . . |
| **District of Columbia** | Sense of the Council in Support of Enhanced Metro Transit Police Department Oversight Resolution of 2020, 67 D.C. Reg. 14611 (Dec. 1, 2020) | • Finding that "some MTPD officers had created and were participating in a 'game' in which officers were rewarded for making arrests and issuing citations."<br>• Establishing an independent review body to address officer complaints. |
| **Georgia** | H.R. 738, 2009 Gen. Assemb., Reg. Sess. (Ga. 2009) 2009 Bill Text GA H.B. 738 | • No local governing authority, law enforcement unit, or peace officer shall by influence or demand require that peace officers employed by a law enforcement unit meet quotas for arrests or the issuance of citations or otherwise increase or maintain the number of arrests or citations for the purpose of providing or increasing revenue.<br>• No local governing authority shall withhold or decrease or threaten, suggest, or imply that such local governing authority will withhold or decrease any funding, revenues, or the operation budget for a law enforcement unit that fails to meet quotas for arrests or the issuance of citations or otherwise fails to increase or maintain the number of arrests or citations for the purpose of maintaining or increasing revenue. |

| | | |
|---|---|---|
| **Nevada** | S. 390, 1999 Leg., 70th Sess. (Nev. 1999) | [A] state or local law enforcement agency in this state shall not:<br>• establish or carry out a policy that requires or encourages, either directly or indirectly, a police officer employed by the law enforcement agency to meet a quota for issuing citations or making arrests.<br>• consider the number of citations issued or arrests made by police officers employed by the law enforcement agency when determining the needs of the agency with respect to equipment, funding or staffing. |
| **Virginia** | H.R. 1376, 2015 Sess. (Va. 2015) | A sheriff shall not . . .<br>• establish a formal or informal quota that requires a deputy to make a specific number of arrests or issue a specific number of summonses within a designated period of time.<br>• use the number of arrests made or summonses issued by a deputy as the sole criterion for evaluating a deputy's job performance. |
| **Washington** | S.R. 6316, 66th Leg., Reg. Sess. (Wash. 2020) | The number of citations issued by a law enforcement officer for traffic infractions, or the amount of penalties assessed from the issuance of such citations, may not be considered in any performance review, evaluation, rating, assessment, salary, promotion, or assignment of the law enforcement officer. |
| **West Virginia** | 1992 Bill Tracking W. Va. H.R. 4037 Prohibiting the use of ticket writing quotas by the Department of Public Safety<br><br>H.B. 2984 (W. Va. 2000) Prohibiting arrest quotas | Any state or local agency . . .<br>• May not establish policy or expectations requiring any officer to meet an arrest quota or use the number of arrests or citations issued by an officer as the criterion for promotion, demotion, dismissal or the earning of any benefit provided by the agency.<br>• May not use the number of arrests or citations issued by their officers as the criterion for funding, staffing or equipment needs. |

## Appendix C. Model Statute

No political subdivision or law enforcement agency employing a law enforcement officer shall require or suggest, directly or indirectly, that a law enforcement officer should follow a quota.

"Quota" means a specified average, percentage, or number of warnings, stops, citations, or arrests to be issued on any daily, weekly, monthly, quarterly or yearly basis.

No political subdivision or law enforcement agency employing a law enforcement officer shall use the number of warnings, stops, citations, or arrests issued by a law enforcement officer as the sole or primary criterion for an officer's demotion, penalization, transfer, termination, constructive dismissal, promotion, or earning of any benefit.

Any officer penalized for failing to adhere to a quota system shall be fully compensated and shall be provided an avenue of legal remedy beyond the unit's internal complaint system.

A violation of this section is a Class B misdemeanor, subject to pension forfeiture only.

A court of this State shall enter an order of pension forfeiture pursuant to this section immediately upon a finding of guilt by the trier of fact or a plea of guilty entered in any court of this State unless the court, for good cause shown, orders a stay of the pension forfeiture pending a hearing on the merits at the time of sentencing.

Nothing in this section shall be deemed to preclude the authority of the board of trustees of any State or locally-administered pension fund or retirement system created under the laws of this State from ordering the forfeiture of all or part of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member's public service.

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2021

# Police Quotas

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# ATTACHMENT 2.

# Arrest Quotas Update Memorandum from Charles Clarke, February 19, 2024 to the City of Berkeley Police Accountability Board and Director of Police Accountability

# Arrest Quotas Update

## Memorandum from Charles Clarke, February 19, 2024 To the City of Berkeley Police Accountability Board and Director of Police Accountability

My earlier *Arrest Quotas* memorandum[1] reported absence of quantitative evidence for the operation of an alleged arrest quota among the members of the Berkeley Police Department (BPD) Bike Unit (formerly known as the DTF, Downtown Task Force). The presence of *qualitative* evidence, mainly intra-Bike Unit/DTF text messages, prompted my recommendation that this Board and the Director continue their investigation of the alleged arrest quota.

One issue of potential interest to this Board that I identified in my earlier memorandum concerned arrest *quality*, not just quantity:[2]

> 4. The arrest *quantities* reported in this memorandum are separate from their *quality*, most notably their adequacy for prosecution by the Alameda County District Attorney (ACDA). This Board should seek from ACDA the prosecutorial outcomes for the cases brought by Bike Unit arrests and for the Department as a whole. In particular, charges that ACDA deems *legally insufficient* (possibly indicating inadequate police work) should be distinguished from charges dropped for other reasons such as the exercise of prosecutorial discretion. The consultation of an outside source as to arrest quality would benefit the Board's understanding of BPD arrest activity.

Berkeley Copwatch has recently issued a report on the alleged arrest quotas.[3] Part of Copwatch's effort included publication of a dataset recording Alameda County District Attorney (ACDA) decisions whether to charge BPD arrestees.[4] This update memorandum addresses arrest quality using the data provided by Berkeley Copwatch. **I find the vast majority of dismissed charges may have been more due to pandemic-caused change in ACDA charging practice, than to policing deficiencies.**

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[1] *Arrest Quotas*: Memorandum from Charles Clarke to the City of Berkeley Police Accountability Board and Director of Police Accountability, August 18, 2023
https://drive.google.com/file/d/14oJZkx43301MQxsLYO7oqA_pi3AAxlsi/view

[2] *Arrest Quotas*, supra n. 1, pp. 15-16

[3] *Purging The Poor: Arrest Quotas, Racist Texts and the Role of City Leadership in the 'Textgate' Scandal*, Berkeley Copwatch, January 16, 2024 (accessed February 18, 2024)
https://www.berkeleycopwatch.org/_files/ugd/9faa72_175f75bda71646b983857d0a0e352434.pdf

[4] Filename `combined-arrests-built20230421.xlsx` (accessed February 18, 2024)
https://docs.google.com/spreadsheets/d/148YRpAp2cOvcUjnIqfgS3TYaY0xcHEJO/edit#gid=1464294616

## What Are The Data?

ACDA's case management system, DALITE, tracks all phases of a case's prosecutorial lifecycle from intake of an arrestee through electronic filing of charges with the Alameda County Superior Court (ACSC)'s Odyssey criminal case management system.[5] On occasion a case's path is more complicated than basic filing through Odyssey, in which case DALITE records the variance with a *disposition ("T") code*.

The disposition codes are elaborated in a decade-old guide sheet[6] that mentions Odyssey's predecessor system, CORPUS (replaced in 2016). Despite its age the guide sheet seems to document current disposition codes, a sample of which is in Table 1.

**Table 1. Sample of Alameda County District Attorney Disposition Codes**

| Disposition Code | Illustrative Subcodes |
|---|---|
| T1 – Lack of Corpus | Conduct lawful; Insufficient proof of value |
| T2 – Lack of Sufficient Evidence | Insufficient corroboration;<br>Insufficient evidence to connect suspect;<br>Insufficient quantity of drugs |
| T3 – Admissibility Factors | Questionable execution (search warrant);<br>Questionable probable cause for arrest/officer not present;<br>Questionable search and seizure problem |
| T4 – Victim Factors | Victim credibility issues;<br>Victim uncooperative |
| T5 – Witness Factors | Necessary witness credibility issues |
| T6 – Other Cases and/or Counts | Declined in favor of other counts/case |
| T7 – Interest of Justice | Defendant provided immunity;<br>Exonerating evidence/information revealed;<br>Nature of offense/relationship of parties |
| T8 – Other | Referred to State Attorney General |
| T9 – Prosecutor Prefiling Deferral | DA Corrective Intervention Program |

Source: *T Series for Refusals*, ACDA, via Berkeley Copwatch. See Exhibit 1.

The Copwatch dataset includes an ACDA disposition code for about four-fifths of BPD arrests in calendar years 2018-2022. Copwatch interprets the remaining one-fifth of recorded arrests lacking a disposition code as having not been dropped by the District Attorney.[7] I concur with this interpretation.

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[5] Alameda County Information Technology Department, *Projects: District Attorney's Case Management System DALITE*, https://itd.acgov.org/projects/ (accessed February 18, 2024)

[6] ACDA, *T Series for Refusals: 02/03/2014*, https://drive.google.com/file/d/1Rd8Cy9hsal-Tj1Wh5EaJ5CDz_dYlKvUi/view (accessed February 18, 2024) Attached as Exhibit 1.

[7] *Purging the Poor*, supra n. 3, p. 13

**The T Codes.** From the perspective of constitutional policing the most troubling reasons for a DA to decline to prosecute an arrestee would be codes **T1** (lack of corpus, meaning lack of legally valid grounds for arrest); **T2** (insufficient evidence of arrestee culpability); and **T3** (evidence admissibility problems). Copwatch has (properly) flagged these codes for scrutiny, given the possibility of unconstitutional police work.

Three other T codes pertain to non-police actors whose actions bear less directly on arrest quality: **T4** (victim factors), **T5** (witness factors), and **T6** (prosecutorial decision to charge an arrestee in a different case or with different counts than those arrested for). Copwatch has (properly) not flagged these codes.

However, Copwatch has also flagged **T7**, a very broad "interest of justice" category encompassing grounds in which (with one exception) the police seem to play no role. The phrase seems to draw upon, for example, the California statute that confers discretion upon a court to dismiss a criminal prosecution, either on its own motion or at the prosecutor's request, "in furtherance of justice."[8] "Interest of justice" seems to be a term of legal art (with a fuzzy meaning to outsiders like myself), so I will henceforth preserve the quotation marks around the phrase "interest of justice."

The one T7 subcode that *does* directly implicate police is subcode T7-K, "Police request no prosecution." California statute allows such a request, for example, in connection with citations for misdemeanors.[9] Unfortunately the T7 *sub*codes are not reported in the Copwatch dataset, so a more specific basis for the DA's declining to prosecute a T7-coded arrest is not known.

In my view, unless contrary evidence becomes known, prosecutions dropped due to code T7 should be viewed as the *District Attorney's exercise of prosecutorial discretion*, not as "unnecessary" arrests by BPD (as Copwatch would have it).[10] **On this view, the disposition codes of greatest concern to the people and police of Berkeley should be T1, T2, and T3, not T7.**

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[8] California Penal Code § 1385(a), *Dismissal of the Action for Want of Prosecution or Otherwise* https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=1385.

[9] California Penal Code § 853.6(j)(3), *Citations for Misdemeanors* ("If…the arresting officer determines that, *in the interest of justice*, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.") (italics added) https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=853.6.

[10] *Purging the Poor*, supra n. 3, p. 13

**The COVID-19 Pandemic and the "Interest of Justice."** This more benign view of the T7 disposition code is grounded in recent history. There is reason to suspect that in early 2020 the ACDA made its charging standards more lenient due to the onset of the COVID-19 pandemic. An April 2020 ACDA press release announced:[11]

> *The DA's Office is only filing cases that involve serious or violent felony crimes.* In fact, our average week's filings since the Shelter in Place Order was given are down nearly 70% from an average week's filing of new cases a year ago. The Court is only open two days a week (Tuesday and Friday) to arraign defendants on new cases. [italics added]

Reduced court availability due to Alameda County's COVID-19 Shelter In Place Order[12] clearly figured in ACDA's limiting its charging to only serious or violent felonies. ACDA did not issue a press release announcing when its pre-pandemic charging standard had been restored, but the Superior Court did announce its gradual reopening over the next two years. Specifically, all courthouses reopened on June 15, 2021,[13] and courtrooms reopened to the public on April 25, 2022.[14] This latter reopening preceded by 10 months the official termination of California's COVID-19 state of emergency on February 28, 2023,[15] but court availability would likely not have constrained ACDA beyond April 2022.

I use the courts' state of reopening as a (very imperfect) proxy for the *timing* of pandemic-related prosecutorial changes. This proxy's main virtue is that courts' reopening is observable and bears some correlation with ACDA's changes. Its main imperfection is the risk of erroneously inferring the District Attorney's *substantive* legal

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[11] Office of the Alameda County District Attorney, "DA O'Malley Makes Statement on Release of Individuals from Santa Rita Jail," April 9, 2020, https://web.archive.org/web/20200628234909/https://www.alcoda.org/newsroom/2020/apr/statement_on_release_from_santa_rita_jail (accessed February 18, 2024) Attached as Exhibit 2.

[12] Order of the [Alameda] County Health Officer to Shelter in Place, March 16, 2020 (accessed February 18, 2024) https://www.acgov.org/documents/Final-Order-to-Shelter-In-Place.pdf Attached as Exhibit 3.

[13] Alameda County Superior Court press release, June 14, 2021 (accessed February 18, 2024) https://www.alameda.courts.ca.gov/system/files/june-14-2021-press-release-re-further-reopening.pdf Attached as Exhibit 4.

[14] Alameda County Superior Court press release, April 14, 2022, (accessed February 18, 2024) https://www.alameda.courts.ca.gov/system/files/april-14-2022-press-release-re-reopening-courtrooms-and-expanded-office-hours-final_1.pdf Attached as Exhibit 5.

[15] Executive Department, State of California, *A Proclamation by the Governor of the State of California Terminating State of Emergency*, February 28, 2023 (accessed February 18, 2024) https://www.gov.ca.gov/wp-content/uploads/2023/02/COVID-SOE-Termination-Proclamation-2.28.23.pdf?emrc=1db54f Attached as Exhibit 6.

decisionmaking from the Superior Court's *scheduling* availability. Therefore I use this proxy solely to demarcate when ACDA likely modified its charging practices in some degree due to the pandemic, but I do not measure that degree.

**The Main Hypothesis.** Following the reasoning of the previous paragraph my main hypothesis is that the District Attorney dismissed more arrests "in the interest of justice" due to the pandemic between March 17, 2020 (the onset of Shelter In Place) and April 25, 2022 (when public access to courtrooms resumed). **Within this 25-month period I expect more frequent dropping of less serious charges "in the interest of justice" – that is, more frequent appearance of code T7 during the pandemic than before or after it.**

The phased court reopening dates suggest distinguishing the "early" pandemic (after March 2020 but before the June 2021 courthouse reopenings) from the "late" pandemic (after June 2021 but before the April 2022 court*room* reopenings). These phases of the pandemic are associated with increased COVID-19 vaccination rates in Alameda County, which I also expect to be associated with resumption of normal (pre-pandemic) ACDA charging practice. As it happened Alameda County (2020 population: 1.68 million[16]) had administered 1.03 million full vaccination series by June 15, 2021 (61% of the population, up from zero in March 2020) and 1.37 million full vaccination series by April 25, 2022 (82% of population).[17] Leniency due to the pandemic would likely have lost explanatory power by the latter date.

A more sophisticated econometric approach to analyze the ACDA "regime change" in charging decisions due to COVID-19 would be *switching regression,* a well-studied technique that would take more time to implement than the one afternoon I spent to write this memorandum.[18] With this direction for future research in mind, the results I report in this memorandum should be viewed as suggestive – perhaps even strongly suggestive – but not conclusive.

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[16] United States Census Bureau, *Alameda County, California, Populations and People* (accessed February 18, 2024) https://data.census.gov/profile/Alameda_County,_California?g=050XX00US06001#populations-and-people

[17] California Department of Public Health, Statewide COVID-19 Vaccines Administered By County (accessed February 18, 2024) https://data.ca.gov/dataset/covid-19-vaccine-progress-dashboard-data/resource/317f8cd8-7225-4b7e-99d1-6ea441043a51

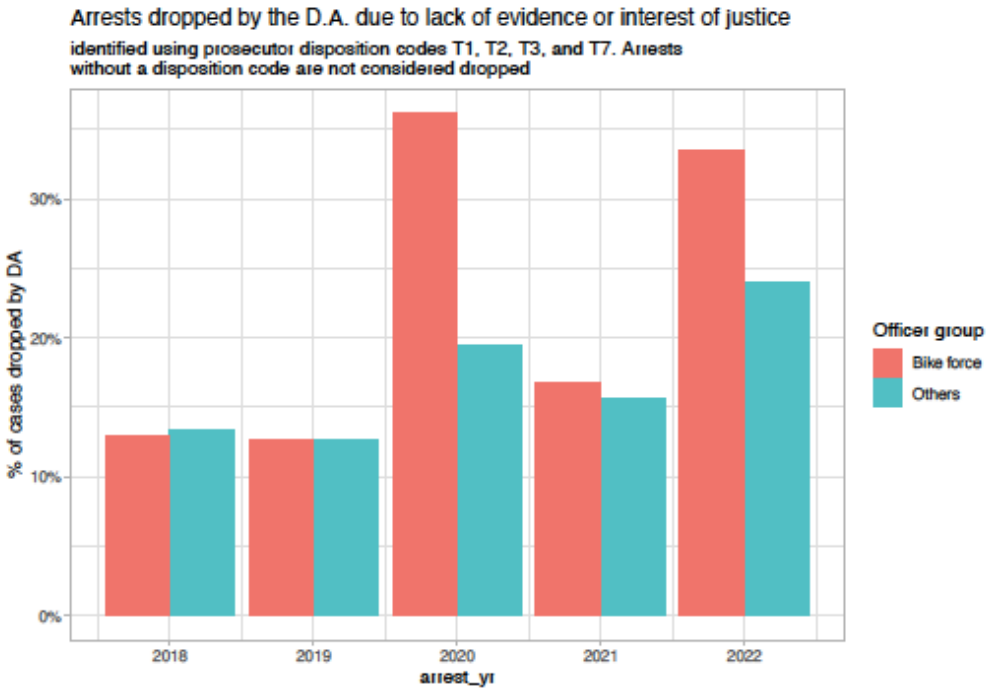
[18] For more on switching regression, see Lung-Fei Lee and Robert H. Porter, "Switching Regression Models with Imperfect Sample Separation Information – With an Application on Cartel Stability," *Econometrica* 52:2 (March 1984), pp. 391-418, https://www.jstor.org/stable/1911495

## What Do The Data Say?

The Copwatch dataset contains a slightly different sample of arrests than the one I reported in my August 2023 memorandum. Copwatch has observations on 10,159 BPD arrests across calendar years 2018-2022 whereas my August dataset observed 10,330 arrests over the same period. For this memorandum I analyze the Copwatch sample without investigating this discrepancy further.

It turns out that the Bike Unit had *zero* arrests dropped due to T1 (invalid detention) and T3 (admissibility problem) in the 2018-2022 sample period. The rest of BPD (other than the Bike Unit) had 0.2% of arrests dropped due to T1 and 0.07% due to T3. In view of the paucity of these events I choose to focus on the relative prevalence of codes T2 and T7, which Copwatch has lumped together (unjustifiably, in my view) in their figure below.[19]

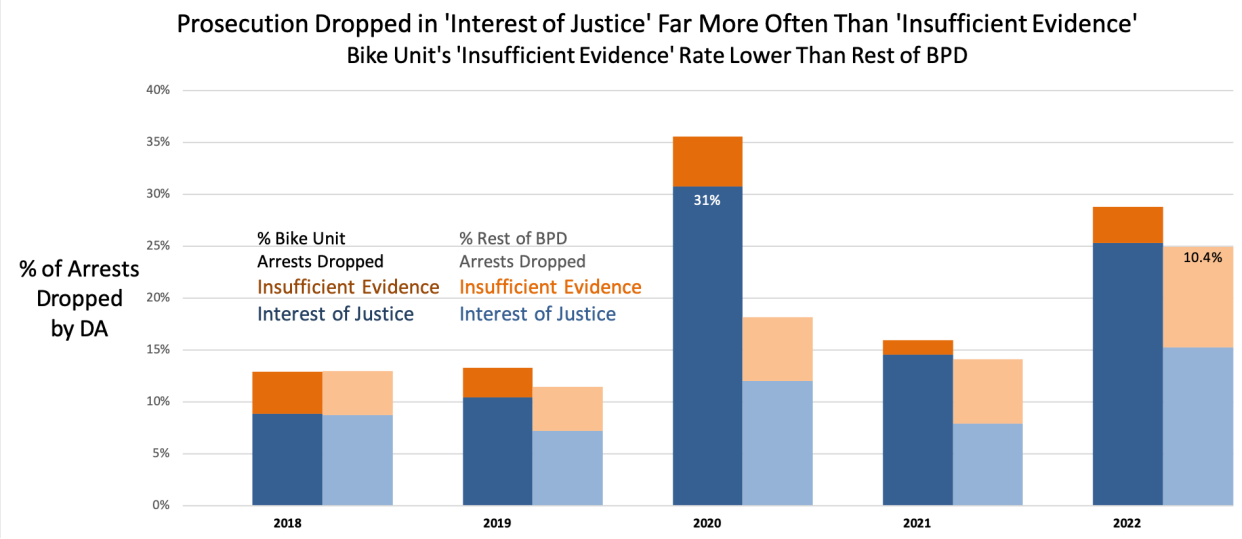
**Figure 1. Copwatch's Summary of the Data**




A more informative approach would distinguish T2 (insufficient evidence, which raises the possibility of a policing problem) from T7 ("interest of justice," which doesn't) to display their relative prevalence, as in Figure 2 below.

[19] *Purging the Poor*, supra n. 3, p. 13

**Figure 2. Distinguishing 'Interest of Justice' from 'Insufficient Evidence'**




Source: Author's tabulation of ACDA data via Copwatch

In Figure 2 the left column (colored more vividly) within each year's cluster displays the fraction of Bike Unit arrests dropped by the District Attorney; the right column (colored more mutedly) is the same fraction for the rest of BPD. Each orange bar refers to prosecutions dropped due to insufficient evidence (code T2); each blue bar to prosecutions dropped "in the interest of justice" (code T7).

The most remarkable feature of Figure 2 is the twin spikes of Bike Unit arrests dropped in the "interest of justice" in 2020 (31% of arrests!) and 2022, particularly when compared to the much lower levels exhibited by the rest of the Police Department. This feature seems to be the confluence of (1) the Bike Unit's community-policing orientation that focused on lesser offenses before they became serious[20] and (2) the District Attorney's pandemic-related shift in focus predominately (or exclusively) toward serious or violent felonies.

Mixed support for my main hypothesis comes from the time pattern of prosecutions dropped "in the interest of justice" during the pandemic (both early and late) compared to before the pandemic – the pandemic exhibited more frequent "interest of justice" dismissals, as hypothesized. However, the post-pandemic rate of dismissals did not return to the pre-pandemic rate and, in the case of BPD (excluding

[20] *Arrest Quotas*, supra n. 1, esp. pp. 4-5 ("The Downtown Task Force/Bike Unit Has Met A City Policing Priority") and pp. 9-12 ("Did the Bike Unit Charge Different Violations From the Rest of BPD?")

the Bike Unit), actually increased substantially (from 12.8% to 15.2%). Table 2 summarizes these patterns.

**Table 2. Prosecutions Dropped As % Of Arrests, by Pandemic Phase**

| Disposition Code | Unit | Pre-Pandemic | Early Pandemic | Late Pandemic | Post-Pandemic |
|---|---|---|---|---|---|
| Insufficient Evidence T2 | Bike Unit | 3.5% | 3.9% | 3.0% | 3.0% |
| | Rest of BPD | 4.5% | 5.4% | 7.7% | 10.4% |
| "Interest of Justice" T7 | Bike Unit | 16.7% | 20.6% | 24.7% | 22.9% |
| | Rest of BPD | 8.9% | 7.9% | 12.8% | 15.2% |

*Notes* Pre-Pandemic=01/01/2018 to 03/16/2020 Early Pandemic=03/17/2020 to 06/14/2021
Late Pandemic=06/15/2021 to 04/24/2022 Post-Pandemic=04/25/2022 to 12/31/2022

The 2021 "trough" between the twin spikes of Figure 2 is not explicable from the recent history already discussed, thereby illustrating a limitation of using calendar dates of pandemic phases to proxy for ACDA charging policy.

A second remarkable feature of Figure 2 is the much lower incidence of Bike Unit arrests dropped due to insufficient evidence (about 3-4%) compared to the rest of BPD (rising to 10.4% in the post-pandemic period). Although the focus of this memorandum (and its prequel) is the Bike Unit, the higher and increasing proportion of rest-of-BPD arrests dropped for insufficient evidence would be worth explaining, which I cannot do with the time and data now available. Part of the explanation would be greater detail about the circumstances under which ACDA records a T2 code, as well as the Police Department explaining what (if anything) it does in response to ACDA's dropping a prosecution due to insufficient evidence (T2), as well as the association of T2 codes with various statutory violations (charges).

A third remarkable feature of Figure 2 circles back to the reason for its creation: the preponderance of prosecutions dropped "in the interest of justice" relative to those dropped due to insufficient evidence, particularly for the Bike Unit but also (to lesser degree) for the rest of BPD. This feature reinforces the need for greater detail about the circumstances under which ACDA issues a T7 code (starting with the relevant subcode) so as to better understand the operation of the Alameda County criminal justice system and BPD's role within it.

From this cursory analysis of the data obtained thus far, to label any of BPD's arrests as "unnecessary" (as Copwatch does) would be as recklessly premature as declaring them flawless. Two additional analyses support this caution: The first asks

about variation across officers of the Bike Unit (and potentially the rest of BPD). The second asks about variation of prosecutions dropped across the arrestees' races.

**Bike Unit and BPD Performance.** Table 3 presents the prosecutions dropped due to T2 and T7 for the individual Bike Unit officers, their performance as a whole (which is just the average across officers, weighted by each officer's arrest count), and the performance of the rest of BPD as a whole. Table 3 echoes the earlier analysis that found (1) a much higher proportion of Bike Unit arrests dropped "in the interest of justice" relative to the rest of BPD (nearly double, 20.1% vs. 10.4%), and (2) a much lower proportion (a bit more than one-half, 3.4% vs. 6.2%) of Bike Unit arrests dropped for insufficient evidence, relative to the rest of BPD.

**Table 3. Prosecutions Dropped as % of Arrests, DTF/Bike Unit vs. BPD, 2018-2022**

| Disposition Code | Kacalek | Breaux | Michalczyk | Pickett | Schikore | Seaton | Shedoudy | Stern | DTF/ Bike Unit | Rest of BPD |
|---|---|---|---|---|---|---|---|---|---|---|
| Insufficient Evidence T2 | 0% | 3% | 2% | 8% | 5% | 4% | 4% | 3% | 3.4% | 6.2% |
| "Interest of Justice" T7 | 10% | 18% | 26% | 12% | 23% | 17% | 17% | 31% | 20.1% | 10.4% |

A more thorough analysis than presented here would investigate how consistently ACDA dropped the same offenses across different arresting officers, particularly across the four calendar subdivisions of Table 2. As a polar example, if all arrests for a statutory violation were dismissed during the pandemic but prosecuted before and after the pandemic, then the pandemic-era dismissals should not be ascribed to reduced arrest quality but rather to more lenient ACDA charging policy. Another polar example could posit that if all arrests by exactly one officer were dismissed, but prosecuted for all the other officers, then the quality of that officer's arrests would warrant additional scrutiny.

The variation across individual officers on display in Table 3 represents some combination of the quality of an officer's arrests and the ACDA's policy toward the offenses alleged against an arrestee (which could vary across pandemic phases). Explaining that variation would be a worthy direction for future research.

**Race.** Table 4 below presents the prosecutions dropped due to T2 and T7 according to the race of the arrestee. To simplify presentation and to avoid diluting non-white groups, I have consolidated arrestees of more than one race/ethnicity with one of the main race/ethnicity groups to which they belong. Thus, *Hispanic* includes Hispanic/White and Hispanic/Other; *Black* includes Black/Hispanic and Black/Other.

**Table 4. Prosecutions Dropped as % of Arrests, By Race, DTF/Bike Unit vs. BPD, 2018-2022**

| Race | Bike Unit | | Rest of BPD | | All BPD | |
|---|---|---|---|---|---|---|
| | T2% | T7% | T2% | T7% | T2% | T7% |
| Black | 1.5% | 8.6% | 2.9% | 4.7% | 2.7% | 5.2% |
| White | 1.5% | 9.4% | 1.6% | 3.6% | 1.6% | 4.3% |
| Hispanic | 0.3% | 1.5% | 1.2% | 1.3% | 1.0% | 1.3% |
| Asian | 0.0% | 0.4% | 0.2% | 0.2% | 0.2% | 0.2% |
| Other | 0.1% | 0.3% | 0.3% | 0.6% | 0.3% | 0.6% |
| Total | 3.4% | 20.1% | 6.2% | 10.4% | 5.8% | 11.6% |

*Notes* *T2*=Insufficient Evidence, *T7*="Interest of Justice"
*Black* includes 'Black,' 'Black/Hispanic,' and 'Black/Other'
*Hispanic* includes 'Hispanic,' 'Hispanic/White,' and 'Hispanic/Other'
*Asian* includes 'Asian' and 'Asian/Other'
*Other* includes 'Other and 'White/Other'

Over the entire 2018-2022 sample period the officers of the Bike Unit had prosecutions dropped due to insufficient evidence (code T2) at an equal rate for Black and white arrestees (1.5%), whereas the rest of BPD had a noticeably higher rate for Black arrestees (2.9%) than white arrestees (1.6%). Keeping in mind that insufficient evidence is a possible indicator of inadequate policing, this disparity (as well as the higher rest-of-BPD insufficient-evidence rates) warrants further examination.

The Bike Unit's arrests dropped "in the interest of justice" (code T7) were more heavily weighted toward white arrestees (9.4%) than Black arrestees (8.6%). The proportionately fewer arrests by the rest of BPD dropped "in the interest of justice" were weighted more toward Black arrestees (4.7%) than white arrestees (3.6%).

As I noted in my August memorandum, the Center for Policing Equity has explained such disparities as due to *community factors* (e.g. racially disparate crime rates) and *policing factors* (e.g. officer discretion),[21] now with the added consideration of pandemic-caused change to ACDA charging practice toward certain crimes that could have affected observed outcomes according to race.

[21] *Arrest Quotas*, supra n. 1, p. 13

A more sophisticated analysis would study the variation of disposition codes (T2, T7) across races, during various pandemic phases, taking into account the crime types that had given rise to arrest. As with the earlier discussion of Table 3, explaining the variation in Table 4 would be a worthy direction for further research.

## Issues of Potential Interest to the Police Accountability Board

The main finding of this memorandum is the preponderance of BPD, especially Bike Unit, arrests whose prosecution was dropped "in the interest of justice," especially compared to the relative few dropped for lack of sufficient evidence. See Figure 2.

The many Bike Unit arrests dropped "in the interest of justice" seem related to a pandemic-era change in ACDA charging standards. Offenses for which the Bike Unit would likely make arrests would not (and did not) rise to the District Attorney's pandemic-era standard of "serious or violent felony crimes."

I suggest several investigative directions following this analysis:

1. Direct inquiry to the Alameda County District Attorney office about the meaning of the various T codes, particularly T7; the meaning of "in the interest of justice" as it pertains to the dropping of a criminal charge; and whether T7 can be equated with "the exercise of prosecutorial discretion."
2. Request to ACDA for data about the *subcodes* that more specifically identify the basis for declining prosecution.
3. Direct inquiry to the ACDA about the pandemic-related change to the office's charging practice.
4. Request to ACDA of other measures of arrest quality that might exist from the prosecutorial perspective.
5. Elicitation from BPD of its usage, if any, of prosecutorial decisions to evaluate officer performance, especially usage of codes T1, T2, and T3.
6. More detailed analysis of prosecutions dropped due to Insufficient Evidence (code T2), including patterns associated with specific officers, specific offenses, arrestee race, and (for the rest of BPD) its growth over time.

## Conclusions

1. A large fraction of Bike Unit arrests has not been prosecuted by the District Attorney "in the interest of justice," especially during the COVID-19 pandemic.

2. The interruption of Superior Court availability during the pandemic may have led the District Attorney to decline to prosecute "in the interest of justice," so these dismissals do not immediately indicate a problem with policing (e.g. "unnecessary" arrests).
3. The fraction of Bike Unit arrests dropped due to insufficient evidence is much smaller than those dropped "in the interest of justice," and proportionately smaller than the rest of BPD.
4. The rest of BPD has had a larger, and growing, fraction of arrests declined prosecution due to insufficient evidence.

I recommend that the Police Accountability Board continue its investigation to ascertain more completely the quality of BPD arrests from the viewpoint of the Alameda County District Attorney. This independent view of BPD performance would be, in my opinion, a valuable perspective for this Board to have.

Exhibit 1 – Alameda County District Attorney Disposition Codes, 02/03/2014
Exhibit 2 – Alameda County District Attorney Press Release, April 9, 2020
Exhibit 3 – Alameda County Health Officer, Shelter In Place Order, March 16, 2020
Exhibit 4 – Alameda County Superior Court Press Release, June 14, 2021
Exhibit 5 – Alameda County Superior Court Press Release, April 14, 2022
Exhibit 6 – Governor of State of California Proclamation Terminating State of Emergency, February 28, 2023

**Erratum to August 18, 2023, Memorandum**

Footnote 28 (p. 10) misidentified the statute governing possession of drug paraphernalia and of methamphetamine. Those are governed by the *California Health and Safety Code*, specifically the Uniform Controlled Substances Act.
https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=HSC&division=10.&title=&part=&chapter=&article=&nodetreepath=12

The footnote should have read:

[28] Cal. H&S.C. §§ 11364(A), 11377(A), P.C. § 647(F)

# EXHIBIT 1

## T Series for Refusals: 02/03/2014

| | |
|---|---|
| **T1 - LACK OF CORPUS** | |
| A | Conduct lawful |
| B | Insufficient proof of value |
| C | No jurisdiction |
| D | Statute of limitations |
| **T2 LACK OF SUFFICIENT EVIDENCE** | |
| A | Aid/Abet evidence insufficient |
| B | Analysis report negative |
| C | Insufficient corroboration |
| D | Insufficient evidence to connect suspect |
| E | Insufficient quantity of drugs |
| F | Refusal/failure to locate/disclose informant |
| | |
| **T3 ADMISSIBILITY FACTORS** | |
| A | Questionable consent |
| B | Questionable execution (search warrant) |
| C | Questionable ID admissibility |
| D | Questionable PC for arrest/officer not present |
| E | Questionable search and seizure problem |
| F | Questionable statement by defendant |
| **T4 – VICTIM FACTORS** | |
| A | Other victim considerations |
| B | Victim credibility issues |
| C | Victim requests no prosecutions |
| D | Victim unable to qualify |
| E | Victim unavailable |
| F | Victim uncooperative |
| **T5 - WITNESS FACTORS** | |
| A | Necessary witness credibility issues |
| B | Necessary witness not available |
| C | Other witness considerations |
| D | Witness privilege |
| **T6 – OTHER CASES AND/OR COUNTS** | |
| A | Declined in favor of other counts/case |
| B | Def. plead/found guilty of other charges/case |
| C | Other charges filed in different county |
| | |

| | |
|---|---|
| **T7 – INTEREST OF JUSTICE** | |
| A | Civil remedy appropriate |
| B | Defendant provided immunity |
| C | Exonerating evidence/information revealed |
| D | Interest of Justice - Defendant |
| E | Interest of Justice - Other |
| F | Made restitution |
| G | Nature of offense/relationship of parties |
| H | No sentence advantage |
| I | Other agency handling (e.g., CPS, Traffic) |
| J | Plea to other jurisdiction |
| K | Police request no prosecution |
| **T8 OTHER (INDICATE REASON IN REMARKS)** | |
| A | Other jurisdictional consideration |
| B | Refer to law enforcement administration |
| C | Referred to State Attorney General |
| **T9 – PROSECUTOR PREFILING DEFERRAL** | |
| A | District Attorney Corrective Intervention Program |
| **U2 – REFERRED TO NON-CALIF. JURIS** | |
| A | Referred to military authority |
| B | Referred to another jurisdiction |
| C | Referred to U.S. Attorney General |
| **U3 – REFERRED TO PROBATION (CORPUS Entry only)** | |
| **U4 – REFERRED TO PAROLE (DALITE Entry only)** | |
| **V1A– SENT BACK FI (indicate one DALITE only)** | |
| 1 | Inadequate ID |
| 2 | Insufficient proof of intent |
| 3 | Check Alibi |
| 4 | Inadequate search evidence |
| 5 | Need corroboration |
| 6 | Insufficient proof of value |
| 7 | Physical evidence - Chain |
| 8 | Physical evidence – Need expert |
| 9 | Need statement |
| 10 | Police Investigation requested (see notes) |
| 11 | Lab results pending |
| 12 | CALICO |

# EXHIBIT 2

# Office of the Alameda County District Attorney

Nancy E. O'Malley, District Attorney



Press Releases
In the News
Events
Felony Verdicts
Misdemeanor Verdicts
Videos
Newsletter
Past Events
**Archives**
**2020**
January
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**April**
May
June
2019
2018
2017
2016
2015

## DA O'Malley Makes Statement on Release of Individuals from Santa Rita Jail

Since the COVID-19 crisis began, this office has worked together with all justice partners to take dramatic steps to reduce the number of individuals detained in custody at Santa Rita Jail. The District Attorney has been working diligently for weeks with the public defender, defense attorneys and the justice partners to systematically release individuals who do not pose a risk of harm to the community or to a victim of crime. We have met at least twice a week, if not more, and remain in constant contact with staff at the Public Defender's Office.

Ultimately, regardless of the actions of the DA or defense, it is the Judge who makes the final decision whether someone will be released.

"The District Attorney's Office is doing everything we can, and should do to address this pandemic. However, we also have the obligation to protect the community from serious and violent offenders," says DA O'Malley "we cannot and will not agree to everyone being released from Santa Rita Jail, as we must also protect the safety of the public. I will also note that it is the constitutional obligation of the District Attorney, which we accept freely, to notify victims of crime if there is a change in circumstances, such as early release. We do all we possibly can to ensure that every victim of a charged crime understands the changes being made and why."

2014
2013
2012
2011
2010
2009
Press Contact

"This Office takes very seriously the duty to balance a defendant's rights with public safety. It is very disappointing that the Public Defender has chosen this time of crisis to grandstand and to make politically divisive and disingenuous statements when what the circumstances demand of all public officials is unity and collaboration."

Efforts to minimize the jail population are being made on multiple fronts:

The DA's Office is only filing cases that involve serious or violent felony crimes. In fact, our average week's filings since the Shelter in Place Order was given are down nearly 70% from an average week's filing of new cases a year ago. The Court is only open two days a week (Tuesday and Friday) to arraign defendants on new cases. Last Friday, we filed three (3) new serious felony crimes. All other crimes presented to us we filed and set dates 60 days out so the defendants could be released from custody.

Efforts also encompass the setting of bail and the negotiation of sentences, which we are doing with an eye on minimizing the jail population. On April 2, 2020 by agreement with Presiding Judge Tara Desautels of the Alameda County Superior Court, all requests for "release on one's own recognizance" for individuals with pending criminal matters, and all requests for "early release" for individuals who were already serving jail sentences issued by Alameda County Superior Court Judges, would receive "judicial review" by a designated judge before releases would be made. Since that time, Supervising Deputy District Attorneys have worked with the defense bar and agreed with defense requests for "O.R" releases and early sentence releases on appropriate cases, always balancing public safety in this time of "Shelter in Place".

The DA's Office is also agreeing to early release of people who are serving a previously imposed sentence.

On March 19, 2020 the Alameda County District Attorney's Office agreed to the early release of 247 individuals already sentenced by the Alameda County Superior Court with scheduled release dates all the way up to April 30, 2020. By doing so, office effectively agreed to take off up to 80 days of an individual's previous court ordered sentence.

On March 20 and March 27, 2020 the office further agreed to the early release of another 9 individuals deemed by Santa Rita Jail as having "vulnerable health conditions". The office is reviewing a list of people

containing individuals whose sentence would end by the end of May. While the release of “Medically Fragile” individuals is also taking place. Due to HIPAA, the DA cannot know which individuals in the jail are of vulnerable health or compromised immune system. However, without giving any information, on our request ACSO provided a list of individuals who may fall in that category. We agreed to most of those people. However, we did not agree to everyone on the list being released. For example, we did not agree with the release of a woman who repeatedly tortured her 5 year old child.

As of today, April 9, 2020, with the latest information from Santa Rita Jail, the jail population of individuals that are serving out their court ordered sentences is currently at 115 – less than half the number of individuals who have already been released by District Attorney agreement these past three weeks.

Regardless of whether or not a defense attorney makes a request, the District Attorney’s Office continues to look at individuals with less than 60 days left on their sentence and are making recommendations to the reviewing judge that we do not oppose early release in appropriate cases.

The District Attorney has set up a system whereby any defense attorney can contact one of four attorneys in the DA’s Office to ask us to look at a specific case for release, and we are doing that every day. The court has assigned two judges to whom we take cases for consideration of early release.

Review of the cases is vital for public safety; cannot jeopardize the safety of victims or the community by abandoning this duty. We must take the necessary care and precaution to ensure the health of those incarcerated and the staff working at the jail without sacrificing the security of victims or well-being of the county. To do otherwise would be irresponsible.

This office has and will continue to work with all justice partners, including the Superior Court, the Alameda County Sheriff, the Probation Department, the defense bar and the Public Defender’s Office to make effective and smart decisions.

Posted on Apr 9, 2020

1225 Fallon St.
Oakland, CA 94612

Tagalog

H.E.A.T. Watch Toolkit
At School
CALICO

Contact us Directions

# EXHIBIT 3

# ORDER OF THE HEALTH OFFICER OF THE COUNTY OF ALAMEDA DIRECTING ALL INDIVIDUALS LIVING IN THE COUNTY TO SHELTER AT THEIR PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR ESSENTIAL BUSINESSES AND GOVERNMENTAL SERVICES; EXEMPTING INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THE SHELTER IN PLACE ORDER BUT URGING THEM TO FIND SHELTER AND GOVERNMENT AGENCIES TO PROVIDE IT; DIRECTING ALL BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NON-ESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN THE COUNTY; PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF ANY NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF ALL NON-ESSENTIAL TRAVEL

**DATE OF ORDER: MARCH 16, 2020**

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*)**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF ALAMEDA ("HEALTH OFFICER") ORDERS:

1. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 10 below. All provisions of this Order should be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat to public health.

2. All individuals currently living within the County of Alameda (the "County") are ordered to shelter at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 10. Individuals

experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to utilize Social Distancing Requirements in their operation).

3. All businesses with a facility in the County, except Essential Businesses as defined below in Section 10, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 10. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 10 below, including, but not limited to, when any customers are standing in line.

4. All public and private gatherings of any number of people occurring outside a household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 10. Nothing in this Order prohibits the gathering of members of a household or living unit.

5. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel and Essential Activities as defined below in Section 10, is prohibited. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 10 below, to the greatest extent feasible. This Order allows travel into or out of the County to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.

6. This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By

reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the County.

7. This Order also is issued in light of the existence of 15 cases of COVID-19 in the County, as well as at least 258 confirmed cases and at least three deaths in the seven Bay Area jurisdictions jointly issuing this Order, as of 5 p.m. on March 15, 2020, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.

8. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the Declarations of Local Health Emergency issued by the Health Officer on March 1 and 5, the March 10, 2020 Resolution of the Board of Supervisors of the County of Alameda Ratifying the Declarations of Local Health Emergency, and Governor Newsom's March 12, 2020 Executive Order N-25-20.

9. This Order comes after the release of substantial guidance from the County Health Officer, the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials throughout the United States and around the world, including a variety of prior orders to combat the spread and harms of COVID-19. The Health Officer will continue to assess the quickly evolving situation and may modify or extend this Order, or issue additional Orders, related to COVID-19.

10. Definitions and Exemptions.

    a. For purposes of this Order, individuals may leave their residence only to perform any of the following "Essential Activities." But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.
        i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
        ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.

iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, or running.
iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
v. To care for a family member or pet in another household.

b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any "Healthcare Operations" including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. "Healthcare Operations" also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. "Healthcare Operations" does not include fitness and exercise gyms and similar facilities.

c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of "Essential Infrastructure," including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.

d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing "Essential Governmental Functions," as determined by the governmental entity performing those functions. Each governmental entity shall identify and designate appropriate employees or contractors to continue providing and carrying out any Essential Governmental Functions. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined in this Section, to the extent possible.

e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.

f. For the purposes of this Order, "Essential Businesses" means:
   i. Healthcare Operations and Essential Infrastructure;
   ii. Grocery stores, certified farmers' markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;
   iii. Food cultivation, including farming, livestock, and fishing;
   iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
   v. Newspapers, television, radio, and other media services;
   vi. Gas stations and auto-supply, auto-repair, and related facilities;
   vii. Banks and related financial institutions;
   viii. Hardware stores;
   ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
   x. Businesses providing mailing and shipping services, including post office boxes;
   xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
   xii. Laundromats, drycleaners, and laundry service providers;
   xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
   xiv. Businesses that supply products needed for people to work from home;
   xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;
   xvi. Businesses that ship or deliver groceries, food, goods or services directly to residences;

xvii. Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
xviii. Home-based care for seniors, adults, or children;
xix. Residential facilities and shelters for seniors, adults, and children;
xx. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
xxi. Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:
    1. Childcare must be carried out in stable groups of 12 or fewer ("stable" means that the same 12 or fewer children are in the same group each day).
    2. Children shall not change from one group to another.
    3. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.
    4. Childcare providers shall remain solely with one group of children.

g. For the purposes of this Order, "Minimum Basic Operations" include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
    i. The minimum necessary activities to maintain the value of the business's inventory, ensure security, process payroll and employee benefits, or for related functions.
    ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

h. For the purposes of this Order, "Essential Travel" includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section below.
    i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
    ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
    iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
    iv. Travel to return to a place of residence from outside the jurisdiction.
    v. Travel required by law enforcement or court order.
    vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.

i. For purposes of this Order, residences include hotels, motels, shared rental units and similar facilities.

j. For purposes of this Order, "Social Distancing Requirements" includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

11. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat to public health.

12. This Order shall become effective at 12:01 a.m. on March 17, 2020 and will continue to be in effect until 11:59 p.m. on April 7, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.

13. Copies of this Order shall promptly be: (1) made available at the County Administration Building at 1225 Oak Street, Oakland, California 94612; (2) posted on the County Public Health Department's website (acphd.org); and (3) provided to any member of the public requesting a copy of this Order.

14. If any provision of this Order to the application thereof to any person or circumstance is held to be invalid, the reminder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

**IT IS SO ORDERED:**

Dr. Erica Pan
Interim Health Officer of the County of Alameda

Dated: March 16, 2020

# EXHIBIT 4

**Superior Court of California**
**COUNTY OF ALAMEDA**

Tara M. Desautels, Presiding Judge
Charles Smiley, Assistant Presiding Judge
Chad Finke, Executive Officer

René C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612
@AlamedaSuperior
www.alameda.courts.ca.gov

**For more information about this news release, please contact:**

Executive Office
pcomments@alameda.courts.ca.gov
510-891-6012

# FOR IMMEDIATE RELEASE

Monday, June 14, 2021

OAKLAND, CALIFORNIA: Superior Court of Alameda County announces the physical reopening of all courthouses and restoration of additional in-person services beginning June 15, 2021.

Consistent with Governor Newsom's "Beyond the Blueprint" plan, the Superior Court of Alameda County (Court) announced today that it will reopen all courthouses to the public and restore additional in-person services beginning June 15, 2021.

On March 17, 2020, the start of the COVID-19 pandemic and related shelter-in-place orders required the Court to close its courthouses to the public. Since that date, Court services have been provided almost exclusively through remote access. However, in recent months, improving COVID-19 conditions in Alameda County have enabled the Court to gradually restore in-person services.

On June 8, 2021, for the first time since the establishment of the tier system, Alameda County moved to the "Yellow Tier," easing some COVID restrictions. On Friday, June 11, the California Department of Public Health (CDPH) issued an order that, among other things, mandated new face covering requirements effective June 15. In addition, the tier system will be eliminated. As an employer, however, the Court is required to comply with regulations issued by Cal/OSHA. Thus, all who enter court facilities will be required to wear a face covering at all times and maintain social distancing until such time as the current regulations are modified by Cal/OSHA or through executive action.

Just as court operations have consistently followed public health guidance, on June 15, with the greatly improved health conditions in Alameda County and throughout the State, the Court will continue and significantly expand its in-person reopening efforts.

Specifically, starting on June 15, 2021, the following clerk's offices will physically re-open to the public for in-person services from 8:30 a.m. to 3:00 p.m., Monday through Friday (with the exception of Friday, June 25):

- Rene C. Davidson Courthouse (RCD), 1225 Fallon Street, Oakland (Criminal).
- Wiley W. Manuel Courthouse, 661 Washington Street, Oakland (Criminal and Traffic).
- East County Hall of Justice, 5151 Gleason Drive, Dublin (Criminal and Traffic).

- Fremont Hall of Justice, 39439 Paseo Padre Parkway, Fremont (Criminal, Traffic).
- Juvenile Justice Center, 2500 Fairmont Drive, San Leandro (Juvenile).

Telephone services will continue to be offered during those business hours, and drop boxes will be available at each of the above locations from 3:00 to 4:00 p.m. every day.

Then, starting June 21, the following services will be offered at the Berkeley Courthouse (Probate), RCD (Civil and Appeals), George E. McDonald Hall of Justice (Records) and Hayward Hall of Justice (Civil, Family), with the exception of Friday, June 25:

- In-person clerk's office hours: 8:30 a.m. – 2:30 p.m.
- Drop box hours: 2:30 p.m. – 4:00 p.m.
- Telephone hours: 10:00 a.m. – 2:00 p.m.

The Court asks all who visit court facilities not to enter if they have been diagnosed with COVID within the last 10 days, if they live or have had "close contact" with a COVID-positive person within the last 14 days, or if they have any symptoms of COVID. Litigants and members of the public can continue to access the Court's services remotely, as explained on the Court's dedicated COVID-19 web page.

The Court looks forward to continuing to expand its in-person court offerings while also maintaining remote access to our Court to the extent permitted by public health and safety guidelines and other applicable authorities. Please continue to check our website and follow @AlamedaSuperior on Twitter for the most current information.

# EXHIBIT 5

**Superior Court of California**
**COUNTY OF ALAMEDA**

Charles A. Smiley III, Presiding Judge
Thomas Nixon, Assistant Presiding Judge
Chad Finke, Executive Officer

René C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612
@AlamedaSuperior
www.alameda.courts.ca.gov

**For more information about this news release, please contact:**

Executive Office
pcomments@alameda.courts.ca.gov
510-891-6012

# FOR IMMEDIATE RELEASE

Thursday, April 14, 2022

OAKLAND, CALIFORNIA: Superior Court of Alameda County announces reopening of courtrooms to the public and expansion of clerk's office hours.

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The Superior Court of Alameda County (Court) announced today that, effective April 25, 2022, it will begin reopening courtrooms to the public. For the duration of the COVID pandemic, the public has been unable to observe court proceedings in person, although access has been available through live audio streaming. While the live streaming option will remain, the public also will now be able to be physically present in the courtroom for proceedings that are open to the public generally.

The process of reopening courtrooms will occur on a rolling basis, driven by resource availability. The Court will maintain an up-to-date list of which courtrooms are open to the public on its dedicated COVID-19 web page. Please note that courtrooms will only be open during times when court is in session. In some courthouses, lists of the daily proceedings are printed and posted, and litigants, attorneys, and members of the public may also check the appropriate case management system online to determine the date, time, and location of hearings:

- Odyssey (Criminal)
- TCMS (Traffic)
- eCourt (Civil/Small Claims)
- DomainWeb (Family/Probate)

The Court continues to require face coverings in all courthouses at all times under General Directive 2022-03A. And while the Court does not currently have any social distancing mandate, it requests that courtroom spectators attempt to maintain a safe distance from each other, including leaving empty seats if possible. Judicial officers will have the authority to limit the number of persons in a courtroom if necessary for the health and safety of the public or Court personnel.

In addition, beginning April 25, Civil, Family, Probate, Records, and Appeals clerk's offices will once again open at 8:30 a.m. for in-person and telephone services, and will close at 2:00 p.m. Criminal clerk's offices will continue to open at 8:30 a.m. and close at 3:00 p.m., while Traffic clerk's offices will open at 8:00 a.m. and close at 3:00 p.m. Drop boxes will be available from when each office closes until 4:00 p.m. every day.

Civil e-filing will still be available 24 hours per day, 7 days a week, along with Criminal and Juvenile e-filing. Fax filing also remains available for Family and Probate filings.

The Court's Self-Help Center will remain closed for in-person service at this time, although assistance is still available by telephone and LiveChat. The Court is planning to resume in-person Self-Help services by appointment only within the coming weeks.

For additional information related to the Court's COVID response, please see our dedicated COVID-19 page, and please follow @AlamedaSuperior on Twitter for immediate updates.

# EXHIBIT 6

# EXECUTIVE DEPARTMENT
# STATE OF CALIFORNIA

## A PROCLAMATION
## BY THE GOVERNOR OF THE STATE OF CALIFORNIA
## TERMINATING STATE OF EMERGENCY

I, **GAVIN NEWSOM**, Governor of the State of California, having found pursuant to Government Code section 8629 that the conditions of extreme peril to the safety of persons and property declared in the State of Emergency proclamation listed below no longer exist, therefore proclaim that the State of Emergency proclaimed on the following date and in the following jurisdiction no longer exists, effective at 11:59 p.m. on February 28, 2023. Accordingly, any Executive Orders related to the terminated State of Emergency will also no longer be in effect as of 11:59 p.m. on February 28, 2023.

| PROCLAMATION | | |
|---|---|---|
| **Emergency** | **Date Proclaimed** | **Jurisdiction** |
| COVID-19 | March 4, 2020 | Statewide |

**I FURTHER DIRECT** that as soon as hereafter possible, this Proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 28th day of February 2023.

GAVIN NEWSOM
Governor of California

**ATTEST:**

SHIRLEY WEBER, PH.D.
Secretary of State

ADENA ISHII
MAYOR OF BERKELEY

**02a.21**

CONSENT CALENDAR
April 15, 2025

To: Honorable Members of the City Council

From: Mayor Adena Ishii (Author), Councilmember Brent Blackaby (Co-Sponsor), Councilmember Cecilia Lunaparra (Co-Sponsor), Councilmember Terry Taplin (Co-Sponsor)

Subject: Referral to City Attorney for Sanctuary City Ordinance

## RECOMMENDATION

Referral to the City Attorney to return to City Council in May with an analysis and recommendation to codify Berkeley's Sanctuary policies and protections through a city ordinance.

## BACKGROUND

On January 21, 2025, the Berkeley City Council adopted a Resolution Reaffirming Berkeley As a Sanctuary City[1] and asking the City Clerk to send a copy to each City Department Director, requesting they inform their staff of the City's Sanctuary City standing and the City's policies and procedures regarding staff interaction with U.S. Immigration and Customs Enforcement (ICE) related to enforcement of federal immigration law. Additionally, the item gave a referral to the City Attorney to explore the possibility of pledging the City's legal support to help "sensitive sites"[2] defend themselves against civil litigation. The resolution called for the Mayor to create a taskforce of Councilmembers, Community Based Organizations (CBOs), immigration and civil rights organizations, faith leaders, legal experts, school and university officials, and community activists to continually assess threats to Berkeley's immigrant communities and participate in the process to codify Berkeley's Sanctuary protections through a city ordinance.

Several cities across California are moving beyond resolutions and adopting Sanctuary City ordinances to provide greater protection to the immigration community in their jurisdiction. For example, on March 11, 2025, the Richmond City Council passed the first reading of a Sanctuary City Ordinance[3] "An Ordinance of the City Council of the City of Richmond Limiting the Use of City Resources for Federal Immigration Enforcement."[4] and on November 19, 2024, [5] the Los Angeles City Council

[1] See Resolution No. 71,658-N.S. "Reaffirming Berkeley As a Sanctuary City"
[2] Sensitive areas such as schools, after-school programs, hospitals, community health centers, and places of worship.
[3] See: https://pub-richmond.escribemeetings.com/filestream.ashx?DocumentId=56701
[4] See: https://pub-richmond.escribemeetings.com/filestream.ashx?DocumentId=56704
[5] See: https://clkrep.lacity.org/onlinedocs/2023/23-0243_CAF_11-19-24.pdf

unanimously passed a City Ordinance to "Prohibit the Use of City Resources for Federal Immigration Enforcement", [6] codifying their Sanctuary policies into law.

Per the January 21, 2025, resolution, Mayor Ishii convened the first Sanctuary City Task Force meeting on February 20th. Over 30 representatives attended where they shared what work is currently happening in Berkeley to support the immigrant community and identified gaps and areas for increased coordination. The Task Force meets again on March 26th. The frequency of subsequent meetings will be determined then.

## RATIONALE FOR RECOMMENDATION

Per the resolution, members of the Task Force have expressed a sense of urgency and interest in establishing a Berkeley Sanctuary City Ordinance that could provide additional protections to Berkeley's immigrant community. The Berkeley City Attorney has a critical role in ensuring the research and development of a Sanctuary City Ordinance is in alignment with the City's existing ordinances, resolutions, and policies. An ordinance would exceed the action of a resolution, as a resolution established a formal statement of opinion or decision for this matter, while an ordinance would codify the City's position creating a permanent law[7] regulating conduct and procedure.

## FINANCIAL IMPLICATIONS

None.

## ENVIRONMENTAL SUSTAINABILITY

No identifiable environmental effects from taking this action.

## CONTACT PERSON

Mayor Adena Ishii 510-981-7100
Julie Sinai jsinai@berkeleyca.gov

Attachments:

1. Resolution No. 71,658-N.S. "Reaffirming Berkeley As a Sanctuary City" dated January 21, 2025

[6] See City of Los Angeles Ordinance No. 188441 (https://clkrep.lacity.org/onlinedocs/2023/23-0243_ord_%20188441_12-19-24.pdf)
[7] Until another law changes.

RESOLUTION NO. 71,658-N.S.

REAFFIRMING BERKELEY AS A SANCTUARY CITY

WHEREAS, the residents of Berkeley have a long history and deep commitment to welcoming immigrants, refugees, and those in exile; and

WHEREAS, the Berkeley community believes in protecting all of our residents and letting them know they are safe, regardless of their immigration status; and

WHEREAS, the City of Berkeley was the first City in the Nation to declare itself a City of Refuge in 1971 (Resolution 44,784-N.S.) and the first City to support the "New Border Vision", in 2020, to encourage Congress to expand public safety, protect human rights, and welcome people to our communities; and

WHEREAS, Berkeley reaffirmed its City of Refuge status in 1986 (Resolution No. 52,596-N.S.), 2007 (Resolution No. 63,711-N.S.), 2015 (Resolution No. 67,325-N.S.), 2016 (Resolution No. 67,598-N.S. & No. 67,763-N.S.) and 2017 (Resolution No. 68,131-N.S.); and

WHEREAS, as of 2023, 21.3% of Berkeley's population are immigrants of varying statuses, with undocumented, DACA, and TPS holders most vulnerable to the incoming administration's threats of discrimination and deportation; and

WHEREAS, multiple studies have proven that jurisdictions that provide sanctuaries are safer and economically more prosperous compared to other jurisdictions – including a 2017 report by the Center for American Progress that shows on average there are 35.5 fewer crimes committed per 10,000 people in sanctuary jurisdictions, the average annual income is $4,353 higher, the poverty rate is 2.3% lower, and unemployment is 1.1% lower; and

WHEREAS, in the interest of promoting public safety, it is important to create an environment in which people feel comfortable interacting with local law enforcement, not eroding that trust by permitting local police officers to assist federal immigration enforcement; and

WHEREAS, in early 2017, a Sanctuary City Task Force was convened, which brought immigration and civil rights groups, faith leaders, legal experts, school and university officials, and community activists together to discuss ways to strengthen our City of Refuge policy, as well as support our undocumented community members; and

WHEREAS, the Task Force and working groups developed resources and protocols to clarify the rights of undocumented individuals and city/community partners in the case of U.S. Immigration & Customs Enforcement (ICE) enforcement activity; and

WHEREAS, the Task Force created procedures to help City Staff act in accordance with Berkeley's Sanctuary City status, should ICE agents contact city officials or visit city

facilities or engage with city staff to collect information, or request assistance with arresting any undocumented or naturalized resident or visitor beyond what is required by federal law; and

WHEREAS, all City of Berkeley Departments and employees of the City of Berkeley, including the Berkeley Police Department, have committed to not comply with ICE officers lacking a valid judicial warrant; and

WHEREAS, the Berkeley School Board passed a similar sanctuary campus policy in December 2017 which articulated restrictions on information sharing, providing access to school facilities, and collaboration with Immigration officials; and

WHEREAS, the Berkeley School Board will soon consider at an upcoming meeting to reaffirm the 2017 Berkeley Unified School District Sanctuary Campus Policy (Resolution 17-050), which articulated restrictions on information sharing, providing access to school facilities, and collaborating with immigration officials; and

WHEREAS, Berkeley City College, UC Berkeley, and University Lutheran Chapel have adopted similar policies; and

WHEREAS, California State Superintendent of Instruction Tony Thurmond champions the bill introduced by Senate Majority Leader Lena Gonzalez SB 48 to Keep Immigration and Customs Enforcement Off of School Campuses, Protecting School Attendance and Funding Amid Deportation Threats; and

WHEREAS, hospitals, clinics, schools, and public transportation are key locations of direct services that immigrants rely on for basic needs and are vulnerable to deportation raids from federal immigration enforcement officers; and

WHEREAS, faith communities and other Community Based Organizations (CBOs) play a vital role by protecting essential human rights and offering support to refugees and undocumented immigrants, requiring commitments from local governments to stand with these institutions and protect them from federal deportation raids or other attacks; and

WHEREAS, the incoming Trump administration has campaigned on threats of mass deportation and has indicated its intent to rescind the longstanding federal policy restricting immigration enforcement activity at schools, after-school programs, hospitals, community health centers, and places of worship; and

WHEREAS, in light of the beginning of the Trump administration's term, the City of Berkeley must remind the community and City Staff of Berkeley's status as a Sanctuary City and a City of Refuge.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it reaffirms that the City of Berkeley is a City of Refuge and a Sanctuary City, and that the

following restrictions on the use of City funds and resources shall be applied relating to enforcement of federal immigration law:

1. No department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information on the status of individuals in the City of Berkeley unless required by federal law.

2. No department, agency, commission, officer or employee shall deny access to any city services or benefits to residents on the basis of their immigration status.

3. The prohibition set forth shall include but not be limited to:

   a. Assisting or cooperating, in one's official capacity, with any Department of Homeland Security (DHS) investigation, detention, or arrest procedures, including but not limited to any such procedures in schools, after-school programs, hospitals, health centers or places of worship, whether public or clandestine, relating to alleged violations of the civil provision of federal immigration law, except as required by federal law.

   b. Requesting information about, or disseminating information regarding, the citizenship, immigration status, or birth country of any individual, except as required by federal law.

   c. Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City of Berkeley, any question regarding immigration status, except as required by federal law.

4. It is the policy of the City of Berkeley to not allow any individual or organization to enter city facilities if their presence would disrupt city operations. Because the City Council believes that ICE activities in city facilities would constitute a severe disruption to the provision of city services, any request by ICE to any City officer or employee shall be immediately assessed for legality through the City Attorney to ensure the safety of city employees and residents accessing city services and compliance with applicable state and federal laws.

5. Except in limited circumstances where ICE agents have a valid judicial warrant, after review and consultation with the City Manager and City Attorney, city departments, agencies, commissions, officers or employees are **not required to**:

   - Cooperate with ICE agents
   - Answer ICE agents' questions or provide any protected data
   - Comply with an ICE Administrative Warrant
   - Immediately comply with a subpoena served by ICE agents
   - Speak with ICE agents at all

6. City officers or employees shall not consent to a search by ICE agents of a non-public area or non-public city records, without a valid judicial warrant.

7. If any person asks questions regarding their immigration status to City staff (while working in their official capacity), City staff shall not refer them to ICE or any other government agency. Instead, City staff shall refer such individuals to local non-profit immigration law organizations. A list of such organizations shall be compiled and disseminated at City buildings and on the City's website. The City Manager is also encouraged to increase and enhance partnerships with community-based organizations, legal service providers, and educational institutions to provide resources for families and City residents facing deportation or other adverse immigration actions.

8. All requests for documents or protected data by ICE to City personnel shall be immediately forwarded to the City Manager for review and consultation with the City Attorney to ensure the safety of city employees and residents, and compliance with applicable state and federal laws.

BE IT FURTHER RESOLVED that the City of Berkeley stands in solidarity with the Berkeley School Board, Berkeley City College, UC Berkeley, University Lutheran Chapel, and other schools, medical institutions, or places of worship that have committed to similar sanctuary policies to protect the residents of Berkeley, regardless of their immigration status.

BE IT FURTHER RESOLVED that the City of Berkeley offers its support and protection to local CBOs and faith communities offering safety and protection to immigrants in the face of direct threats from federal agencies.

BE IT FURTHER RESOLVED that the Council shall refer to the City Attorney to explore the possibility of pledging the City's legal support to help local CBOs and other "sensitive sites", such as schools, after-school programs, hospitals, community health centers, and places of worship, defend themselves against civil litigation.

BE IT FURTHER RESOLVED that the City Council will collaborate with the boards of BART, AC Transit, East Bay Regional Parks District, UC and CSU systems, Peralta Community College District, and county hospital systems to ensure that the Right to Sanctuary is protected on a regional level.

BE IT FURTHER RESOLVED that the City of Berkeley calls on other Bay Area and California cities to reaffirm their commitments to sanctuary and pass legislation that protects all California residents.

BE IT FURTHER RESOLVED that the City of Berkeley calls on the California legislature to pass SB 48 to Keep Immigration and Customs Enforcement Off of School Campuses, Protecting School Attendance and Funding Amid Deportation Threats.

BE IT FURTHER RESOLVED that copies of this resolution, including any future amendments thereto, shall be transmitted to every department, agency and commission, and employee of the City of Berkeley; to our Alameda County, California, and Congressional representatives; and to the mayors of the rest of the Bay Area cities.

BE IT FURTHER RESOLVED that the City of Berkeley will continue to seek additional ways to enact protections for undocumented immigrants in our community.

The foregoing Resolution was adopted by the Berkeley City Council on January 21, 2025 by the following vote:

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

Noes: None.

Absent: Bartlett.

Adena Ishii, Mayor

Attest:
Mark Numainville, City Clerk

Shoshana O'Keefe
CITY COUNCILMEMBER DISTRICT 5

# 02a.22

CONSENT CALENDAR
April 15, 2025

To: Honorable Mayor and Members of the City Council
From: Councilmember Shoshana O'Keefe (Author), Mayor Adena Ishii, Councilmembers Brent Blackaby and Cecilia Lunaparra (Co-Sponsors)
Subject: Alternative Housing Options for People Experiencing Homelessness

## RECOMMENDATION

Refer to the City Manager a request for staff to identify a list of potential locations of City properties (such as parks, parking lots, buildings, and other sites) and private properties (to be leased or acquired) – for the purpose of establishing alternative housing options including but not limited to indoor/outdoor camping areas, safe RV and car park zones, and/or congregate or non-congregate shelters for people experiencing homelessness based on the model used at Grayson Street.

## SUMMARY STATEMENT

Following the clearing of a homeless encampment at Old City Hall in early December 2024, unhoused residents formed a new encampment at Civic Center Park. Many Berkeley High School students, teachers, and parents, City of Berkeley staff, local businesses, Farmers Market vendors and visitors, residents of the encampment and their advocates have urged the City to address concerns related to health hazards and violence in and around the Civic Center Park encampment. While the City shifted focus and resources to address the encampment, successfully rehousing and securing temporary housing for many residents, various other unsanctioned encampments around Berkeley continue to pose similar concerns.

Our City remains committed to supporting our unhoused residents with the dignity, compassion, and respect they deserve while ensuring that public spaces remain equally accessible for all. This is not a mutually exclusive goal and is achievable with the support of critical stakeholders. In 2021, in collaboration with Dorothy Day House and Bayer, the City helped open a transitional shelter where unhoused people reported feeling safe, comfortable, and respected. As expected, the Grayson Street shelter and the safe RV lot closed when the City's lease with REDCO Development LLC expired. Despite its efforts, the City could not immediately identify a viable alternative for the site, but staff took note of the positive effect this indoor camping and safe outdoor parking area had on all Berkeley residents.

Working against larger national and regional trends, the City of Berkeley has significantly reduced unsheltered homelessness by 45%. Despite that, the City continues to struggle to meet the housing and wrap-around service needs of our unhoused residents. While the City continues to pursue long-term, best-practice approaches such as expanding shelter capacity and seeking funding to build more transitional and permanent affordable housing, it's clear these efforts are not enough. We must look toward supplemental solutions and create

opportunities to more expeditiously support the unhoused community, while ensuring our public space is accessible to all.

This item requests that the City Manager identify and compile a list of City- and privately-owned properties to establish housing alternatives such as an indoor/outdoor camping area, safe RV and car parking, and/or congregate or non-congregate shelter for our unhoused residents who want to stay in Berkeley. The purpose is to provide a safe, clean space where unhoused community members can live, access resources, and ultimately transition to permanent housing. Ideally, some of these sites would have capacity to support the relocation of an entire encampment, to preserve an existing supportive community.

BACKGROUND

High cost of living and the lack of affordable housing stock in the United States has led to an increase in unsheltered homelessness and chronic homelessness since 2016. Between January 2023 and January 2024, homelessness in the United States increased by 18% – the largest jump since the Department of Housing and Urban Development began reporting in 2007. Additionally, although underreported, unhoused people are more likely to be victims of violent crime than they are to commit these crimes, often worsening cycles of trauma among the unhoused community and beyond.[1]

In 2024, Alameda County saw the first decrease in homelessness in a decade. Between 2022 and 2024, Berkeley saw a 21% overall decrease in homelessness and a 45% decrease in unsheltered homelessness. These decreases at the County and City levels are likely the direct result of massive investments in affordable housing production and our homelessness response system, as made possible by Berkeley residents through their support of Measures O and P – both passed in 2018 with over 77% and 72% approval, respectively. Furthermore, Measure U1 – passed in 2016 with nearly 75% of the vote – has generated millions for affordable housing projects.

In 2017, the Berkeley City Council launched the Pathways Project to address homelessness by providing temporary shelter while working on longer-term solutions. Phase 1 established the STAIR Center, a low-barrier shelter open 24 hours a day and with services such as on-site mental health support, substance use disorder programing, and job training services. Phase 2 introduced the 1,000 Person Plan to ensure shelter or housing for every homeless person in the City.

According to the 1,000 Person Plan Referral Response, to end homelessness for 1,000 people in Berkeley, the City will need up-front investments in targeted homelessness prevention, light-touch housing problem-solving, rapid rehousing, and permanent subsidies, with a cost of $16-19.5 million upfront and an annual ongoing expense of between roughly $12-15 million. Staff concluded that even this level of investment would unlikely end homelessness, but could

[1] Berg, Steve. “The Disturbing Realities of Homelessness and Violence.” National Alliance to End Homelessness, January 24, 2022. https://endhomelessness.org/blog/the-disturbing-realities-of-homelessness-and-violence/.

increase the system's capacity to support those experiencing long-term and chronic homelessness.[2]

At the start of 2023, Berkeley had nearly 350 shelter beds, 108 of which were seasonal and open only during the winter months. Over the course of 2023, more than 900 individual people used a shelter bed in Berkeley. As of late 2024 and since the inception of Measures O, P, and U1, more than 650 interim housing beds and permanent housing units have been funded, serving over 2,000 residents. The City also had about 50 transitional housing beds dedicated for specific populations, including transition-aged youth, people with substance use disorders, and veterans. During January and February of 2024, 82% of available shelter beds were occupied each night on average. Non-congregate shelters had higher levels of utilization: 93% of beds in non-congregate shelters were full on average, compared to 79% of beds in congregate shelters.[3]

In the last several years, Berkeley has passed major zoning reforms, implemented Measure O, and is racing to meet its commitments under the Housing Element, building housing at the fastest rates in decades. Still, on any given night in Alameda County, more than 8,000 people experience homelessness, with 844 of those people residing in Berkeley. 39% of unhoused residents in Berkeley reported that the primary cause of homelessness was related to losing housing, while 33% reported their condition was related to the loss of a job and income, and 21% reported it was due to health-related issues.[4]

Despite unprecedented investments in housing, affordable housing stock remains limited, and building costs and timelines remain uncircumventable. Given the urgency around addressing newer and existing encampments around the City, Berkeley and its residents could benefit from exploring additional short-term options for alternative housing such as tiny houses, micro units, ADUs, vehicle camping, indoor or outdoor camping sites, and more – with the ultimate long-term goal of providing permanent housing.

Fortunately, there is precedent for establishing a comprehensive camping area and transitional programs in Berkeley. In 2021, the City partnered with Dorothy Day House to create the Horizon Transitional Village and Safe Parking and Respite Kickstart (SPARK) site at 742 Grayson Street in West Berkeley. The site operated from July of 2021 until the City's lease ended on October 31, 2022. The site combined an RV parking area with on-site services and vehicle repair assistance, creating a holistic program for people living in their vehicles.

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[2] City of Berkeley. Referral Response: 1000 Person Plan to Address Homelessness, April 30, 2019. https://berkeleyca.gov/sites/default/files/documents/2023-02-14 Item 14 Referral Response Home Share.pdf.

[3] City of Berkeley. Gap Analysis of Berkeley's Homelessness System of Care, July 9, 2024. https://berkeleyca.gov/sites/default/files/documents/2024-07-09 Item 16 Referral Response Gap Analysis of Berkeley's Homelessness.pdf.

[4] Alameda County. "City of Berkeley Homeless Census & Survey 2024 Executive Summary ." Alameda County Health Housing and Homelessness Services , 2024. https://homelessness.acgov.org/homelessness-assets/docs/infographic/Berkeley%20PIT%202024%20Infographic.pdf.

The SPARK site provided space for up to 40 RVs, and its residents – primarily individuals displaced from unsanctioned RV encampments at 8th and Harrison Streets – were able to access basic amenities like water, portable toilets, and showers, along with vehicle repair stipends for up to $1,500 to help with RV maintenance. Additionally, the indoor site provided space for about 50 people and included small personal storage cubbies, a breakfast area, recreational space with a library and "movie theater" and a back storage area for residents to store larger items.[5]

(Photo credit: Supriya Yelimeli, Berkeleyside)

Case management and housing navigation services were also provided, supporting long-term housing transitions. The program served approximately 150 individuals during its operation, successfully connecting about 30 participants to permanent housing. While staff inquired about extending the lease, the owner of the property, San Francisco-based REDCO Development LLC expressed intent to build a life sciences hub on the property.

Ultimately, homelessness is a symptom of bigger, interconnecting trends that have grown worse in the last decade and are largely out of Berkeley's control. Despite the challenges, Berkeley has adopted a humane approach that has been proven to work and made significant progress in addressing homelessness, a testament to the tremendous work of City Staff and the commitment of Berkeley residents alike. This item presents an opportunity for Berkeley to continue to lead on the issue of homelessness by asking the City Manager to explore novel and innovative approaches that remain rooted in our values.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

In July 2021, Berkeley City Council voted to endorse the All Home California Regional Action Plan (RAP), which seeks to reduce the number of people experiencing unsheltered homelessness across the nine county Bay Area region by 75%.

[5] Yelimeli, Supriya. "New West Berkeley homeless shelter opens as city emerges from COVID-19 pandemic." Berkeleyside, July 2, 2021. https://www.berkeleyside.org/2021/07/02/new-west-berkeley-homeless-shelter-grayson-street-2

Further, the City of Berkeley Administrative Regulations, Regulating Temporary Non-Commercial Objects on Sidewalks and in Parklets, Pursuant to BMC § 14.48.120, states that "Temporary Noncommercial (TNC) Objects," as defined by code (e.g., personal belongings under immediate control, of certain size/weight, and not for sale), must not impede the safe and accessible Path of Travel, violate designated TNC Prohibited Areas, or otherwise pose health or safety risks on public sidewalks or parklets. These regulations permit removal of TNC objects that exceed defined size or time limits, obstruct pedestrian or disability access, or infringe on critical infrastructure such as fire hydrants, transit stops, or building entrances, and require advance notice (except in emergencies) before the city may remove such objects.[6]

Berkeley's official encampment policy adopted in 2024, reaffirms the City's commitment to offering interim housing whenever possible but authorizes removal of encampments without a shelter offer under six specific conditions, such as when an encampment poses a fire hazard, creates an imminent health risk, constitutes a public nuisance, is located on or dangerously close to a roadway, interferes with authorized construction or maintenance, or impedes city or utility operations.[7]

ACTIONS/ALTERNATIVES CONSIDERED

The City of Berkeley is known for its creative and innovative approach to public policy. While the City should remain on course and continue creating additional permanent housing, without a plethora of transitional and temporary housing and safe site options for unhoused individuals, many will continue to experience unsheltered homelessness with little access to resources. On any given night, some 24% of Berkeley's unhoused residents sleep on the street or sidewalk. This item recognizes that it is neither sustainable nor suitable for an average of 445 people to camp on our public sidewalks, streets, and parks every single night.

While there is no panacea for homelessness, the City can help people experiencing homelessness live with dignity by ensuring they have a safe space to access personal hygiene care and resources with their belongings and pets, remaining within their community and support networks.

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

The author and co-sponsors consulted with City Staff and numerous community stakeholders including but not limited to unhoused community members, business representatives, non-profit leaders, and advocates.

Councilmember O'Keefe discussed the item with the City Manager and he expressed an interest in working with City Staff to evaluate possible locations to expand alternative housing

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[6] City of Berkeley, Municipal Code, Chapter 14.480, Section 120 (2018). https://berkeleyca.gov/sites/default/files/documents/Administrative%20Regulation%2010.2.pdf

[7] City of Berkeley. Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods and Related First Reading of Ordinance Amending Chapter 14.48 of the Berkeley Municipal Code, September 10, 2024. https://berkeleyca.gov/sites/default/files/documents/2024-09-10 Item 37 Encampment Policy Resolution.pdf.

options. Further, Councilmember O'Keefe and Mayor Ishii met with the Deputy City Manager and head of Neighborhood Services to solicit their input and feedback, incorporating it into this item. Councilmember O'Keefe also met with residents of the Harrison Street encampment and spoke with homeless advocates, who expressed support for the idea.

Moreover, Councilmember Lunaparra hosted a Forum on Homelessness in early December that was specifically focused on soliciting ways to address homelessness from unhoused people themselves, and a camping area was repeatedly brought up as something that would be beneficial to Berkeley's unhoused residents and the city as a whole.

RATIONALE FOR RECOMMENDATION

This item proposes identifying locations that can be used for shorter-term solutions such as City-managed RV and car parks, indoor/outdoor camping areas, and/or additional congregate or non-congregate sites that may provide immediate, emergency shelter and relief for unhoused people, ensuring they will be connected to resources while the City works toward more permanent solutions, and preserves access to Berkeley's public parks and spaces for all.

IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT

This referral exclusively asks the City Manager to identify and develop a list of locations for the creation of a safe, alternative housing site. Implementation will not take place until further Council action. This referral does not include discussion of how a potential site could be operationalized or administered. Blueprints and precedent already exist and have been proven successful for such implementation at the Grayson Street Shelter and safe RV Zone, and we request staff consult these plans to inform their work.

Feasibility should be determined under the assumption that city funds will be used to purchase/lease and manage the eventual site or sites. The intent of this referral is to provide additional safe housing options for Berkeley's unsheltered residents and not to address the issue on a regional level. While identifying a source of funding is not within the scope of this referral, the search process should be done with the goal of ensuring local control of any eventual housing sites.

Anecdotal conversations with many unhoused people and their advocates reveal that the following criteria should be taken into consideration by City Staff when evaluating possible sites for a camping area:

- Public transit accessibility
- Proximity to existing homeless services, such as Dorothy Day House or the Sacred Rest Drop-In Center
- Access to food, electricity, potable water, on-site showers, laundry, and sanitation
- Regular trash and waste removal
- ADA compliance

ENVIRONMENTAL SUSTAINABILITY
N/A

FISCAL IMPACTS
Fiscal impacts limited to staff time.

OUTCOMES AND EVALUATION
The City Manager should return to the City Council with a list of sites to provide safe alternative housing options, a report detailing the concerns and roadblocks to implementation, and information regarding steps the City can take to initiate and/or secure a site for such shelter.

Due to the urgent nature of this public health and humanitarian crisis, this item asks the City Manager to expedite this process and return to Council as soon as feasible.

CONTACT
Councilmember Shoshana O'Keefe, (510) 981-7150

02a.23

Brent Blackaby
Councilmember District 6

CONSENT CALENDAR
April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Councilmember Blackaby (Author)

Subject: Resolution: Affirming Support for Berkeley Police Department, Police Accountability Board, and Office of the Director of Police Accountability in Response to Downtown Task Force Texting Offenses Investigation

## RECOMMENDATION

Adopt a Resolution affirming our community's support for the Berkeley Police Department (BPD) and acknowledging the work of the Police Accountability Board (PAB) & the Office of the Director of Police Accountability (ODPA) in investigating BPD's Downtown Task Force texting offenses, ultimately making recommendations to increase trust, transparency, and accountability. Additionally, the Resolution condemns any and all racism and misconduct, affirms the City Council's opposition to arrest quotas, and asks the California Legislature to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code.

## FINANCIAL IMPLICATIONS

None

## CURRENT SITUATION AND ITS EFFECTS

Council's Public Safety Policy Committee reviewed Item #3: *Berkeley Police Department Texting Offenses: An Independent Investigation by the Police Accountability Board* at its February 25, 2025 meeting and voted to return it to Council with a negative recommendation.

Instead, this resolution serves to acknowledge the importance of the Police Accountability Board and the Director of Police Accountability and the critical role they play in ensuring the Berkeley Police Department's accountability to the community as well as identifying & resolving policy or personnel issues as they occur. Berkeley has been a leader in police accountability, and that is a history to honor. The resolution also affirms our confidence in BPD, PAB, and ODPA.

The City of Berkeley condemns any and all racism and misconduct. Misconduct of any kind—whether on-duty or off-duty—is unacceptable behavior from anyone in our community, particularly from those who are sworn to protect vulnerable populations. This is especially true regarding racial, economic, or other types of bias.

BACKGROUND

The Police Accountability Board (PAB) submitted a report on the Downtown Task Force Texting Offenses Investigation for the City Council's October 1, 2024 agenda, which the Agenda Committee referred to the Public Safety Policy Committee (PSPC). The item was withdrawn from the PSPC as requested by a PAB vote during their September 25, 2024 meeting. The Office of the Director of Police Accountability and the Police Accountability Board submitted a new report for the January 21, 2025 Council Meeting. The Agenda and Rules Policy Committee referred the item to the Public Safety Policy Committee. The PSPC heard the item on February 25, 2025.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None

CONTACT PERSON

Councilmember Brent Blackaby Council District 6 510-981-7160

Attachments:
1: Resolution

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

AFFIRMING SUPPORT FOR BERKELEY POLICE DEPARTMENT, POLICE ACCOUNTABILITY BOARD, AND OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY IN RESPONSE TO DOWNTOWN TASK FORCE TEXTING OFFENSES INVESTIGATION

WHEREAS, community safety is best served when the Berkeley Police Department (BPD), the Police Accountability Board (PAB), and the Office of the Director of Police Accountability (ODPA) are all operating at their best; and

WHEREAS, we have full confidence in the Berkeley Police Department and Chief Louis and are proud of the work of our Department and its dedication to keeping the community safe; and

WHEREAS, citizen oversight plays a critical role in ensuring BPD's accountability to the community and identifying & resolving policy or personnel issues as they occur. Through the PAB, ODPA, and previously the Police Review Commission (PRC), Berkeley has long been a leader in police accountability; and

WHEREAS, the PAB and ODPA contributed countless hours of work to the investigation of texting offenses in BPD's Downtown Task Force that occurred between 2019 and 2020 and became public in November 2022, making thoughtful recommendations to mitigate future instances of potential misconduct. Reading the text messages identified instances of racial insensitivity and poor judgment, highlighting the need for increased awareness and sensitivity to issues of race and inclusion; and

WHEREAS, whether on-duty or off-duty, misconduct of any kind is unacceptable behavior for our Police Officers. This is especially true with regard to racial, economic, or other types of bias; and

WHEREAS, we are grateful that BPD and PAB are working together with the Berkeley Police Association (BPA) to implement an Early Intervention System that will help identify personnel concerns, stresses, or challenges much earlier, before they materialize into misconduct or other problems in our community; and

WHEREAS, the City encourages BPD and PAB to work together through their existing collaborative process to make any needed changes to existing BPD policies on the use of personal communications devices, off-duty conduct, traffic function and responsibility and other important areas.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that we encourage the Berkeley Police Department, the Police Accountability Board, and the Office of the Director of Police Accountability to continue to work together in good faith in order to keep our community safe. The successful missions of each of these organizations are essential to maintaining the trust of all Berkeley residents.

BE IT FURTHER RESOLVED that the Berkeley City Council has full confidence in Berkeley's Police Accountability Board, the Office of the Director of Police Accountability, and the Berkeley Police Department.

BE IT FURTHER RESOLVED that the Berkeley City Council affirms the PAB's ability to access relevant information to conduct specific investigations, under authority granted by the Charter. The particular types of documents that should be accessible during different types of investigations (i.e., personnel misconduct, policy reviews, policy & practice reviews) are necessarily limited by state law and due process considerations. Therefore, we urge the PAB, OPDA, and BPD to adopt their final regulations as expeditiously as possible, after completing the "meet and confer" process with the BPA, to clarify how investigations will be conducted with appropriate information provided by BPD.

BE IT FURTHER RESOLVED that the Berkeley City Council condemns any and all racism and misconduct.

BE IT FURTHER RESOLVED that the Berkeley City Council affirms its strong opposition to arrest quotas and supports BPD's existing practice against using arrest quotas.

BE IT FURTHER RESOLVED that the Berkeley City Council urges the California State Legislature to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code (Section 41600-41603) to all types of arrests in California.

# 02a.31

Environment and Climate Commission

INFORMATION CALENDAR
April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Environment and Climate Commission (ECC)

Submitted by: Brianna McGuire, Chairperson, ECC

Subject: Environment and Climate Commission 2025 Work Plan

## INTRODUCTION

The Environment and Climate Commission (ECC) is responsible for advising the City Council on matters related to environmental sustainability and climate change. ECC's scope includes work to advance the goals of: advancing green buildings and resource efficiency; decarbonizing buildings and transportation; engaging and educating the community; addressing the impacts and welfare of all species, including animals, insects, and plants; reducing greenhouse gas emissions; reducing toxics and preventing pollution; and supporting environmental justice. The ECC works closely with the City of Berkeley's Office of Energy & Sustainable Development (OESD).

## CURRENT SITUATION AND ITS EFFECTS

The ECC has a broad scope and a responsibility to support and work closely with OESD staff. The ECC created subcommittees to work on the following projects:

| Project | Status | Description |
|---|---|---|
| Building Decarbonization | In Committee | Support OESD staff with feedback on building electrification programs, including Building Emissions Saving Ordinance (BESO), Berkeley Existing Buildings Electrification Strategy, Climate Equity Fund, Just Transition Fund, REACH Codes, and Building Performance Standards. Collaboration with Housing Advisory Committee as needed. |
| Community-informed Environmental Justice & Climate Metrics, and<br><br>Principles of Just Transition, Vehicle Miles Traveled & Workforce | In Committee | Support and participate in 2025 efforts to develop an Environmental Justice Element for the General Plan and track the city's climate goals using community-driven benchmarks (health-focused, emissions-based, qualitative measure, etc.).<br><br>Perform research and give feedback on the Just Transition principles, Vehicle Miles Traveled reduction, and development of a Workforce Development Board to suggest as amendments to the City's General Plan. |

| | | |
|---|---|---|
| Community Outreach | In Committee | In collaboration with OESD, plan community outreach campaigns, create materials, and support events that raise awareness of City activities, public programs, and local climate action opportunities. Make suggestions about possible website improvements. Raise awareness of climate activities/resources to Councilmembers. |
| Climate Emergency Preparedness | In Committee | In coordination with the Office of Emergency Services and Public Health Community Preparedness and Prevention Team, support the City with engagement on climate emergency education and resources including at Community Resilience Centers. |
| OESD Input & Support | Ongoing | Support OESD staff with feedback on programs, standards, and other initiatives, including the Climate Equity Fund, Climate Action planning, etc. Forward viable grant opportunities when appropriate. |

At its February 26, 2025 meeting the ECC approved the work plan to send to City Council as follows: Motion/second to approve the 2025 Workplan with minor revisions as discussed and recorded (McGuire, Binns). The motion carried 8-0-0-1; Ayes: Ranney, McGuire, Tahara, Guliasi, Kesselman, Binns, Athanasiou, Syed. Noes: None. Abstain: None. Absent: LaBonte.

## BACKGROUND

First established in 2022, the ECC was formed by merging the Community Environmental Advisory Commission and the Energy Commission. ECC commissioners bring a wide range of expertise, with backgrounds in government, academia, nonprofit, and private sector environmental work, and include youth perspectives. These backgrounds inform the ECC's work and help it to consider diverse and equitable approaches to addressing the City's environmental challenges.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The ECC's initiatives will improve environmental sustainability, reduce greenhouse gas emissions, and support a just transition.

## POSSIBLE FUTURE ACTION

This work plan is intended to provide a guide to the work the ECC plans to take on in 2025. As additional items or issues arise, or are referred to the Commission from Council, the ECC will adjust this plan accordingly.

## FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Future action items that the ECC may send to City Council could require staff time to develop, finalize, and/or implement. The ECC strives to ensure proposals provide

significant net triple bottom line benefits to the City when evaluating total costs and benefits across environmental, social, and economic impacts.

CONTACT PERSON

Sarah Moore, Secretary, Environment and Climate Commission, smoore@berkeleyca.gov

CITY OF BERKELEY
OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

**02a.32**

INFORMATION CALENDAR
April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Police Accountability Board

Submitted by: Hansel A. Aguilar, Director of Police Accountability (DPA) & Secretary of the Police Accountability Board (PAB)

Subject: Police Accountability Board Recommendation: Former Board Member Recognition

**INFORTMATION ONLY REPORT**

This report presents resolutions recognizing and expressing appreciation for the service and contributions of former Police Accountability Board (PAB) members. The PAB plays a vital role in promoting civilian oversight and police accountability in Berkeley, and these resolutions acknowledge the dedication and efforts of departing members. As an informational item, this report provides the resolutions for City Council's consideration.:

Resolutions Expressing Appreciation for Past Board Members:

1. *Resolution thanking Regina Harris for her service and commitment to civilian oversight (see Resolution Attached)*
2. *Resolution thanking Brent Blackaby for his service and commitment to civilian oversight (see Resolution Attached)*
3. *Resolution thanking John "Chip" Moore for his service and leadership in civilian oversight (see Resolution Attached)*
4. *Resolution thanking Alexander Mozes for his service and commitment to civilian oversight (see Resolution Attached)*
5. *Resolution thanking Michael Chang for his service and commitment to civilian oversight (see Resolution Attached)*
6. *Resolution thanking Nathan Mizell for his service and commitment to civilian oversight (see Resolution Attached)*
7. *Resolution thanking Ismail Ramsey for his service and commitment to civilian oversight (see Resolution Attached)*

8. *Resolution of thanking Deborah Levine for her service and commitment to civilian oversight (see Resolution Attached)*
9. *Resolution thanking Cheryl Owens for her service and commitment to civilian oversight (see Resolution Attached)*

## SUMMARY

This report provides the resolutions for former Police Accountability Board Members.

The resolutions are in the following order:

1. Regina Harris
2. Brent Blackaby
3. John "Chip" Moore
4. Alexander Mozes
5. Michael Chang
6. Nathan Mizell
7. Ismail Ramsey
8. Deborah Levine
9. Cheryl Owens

## FISCAL IMPACTS OF RECOMMENDATION

There are no identifiable fiscal impacts associated with these recommendations.

## CURRENT SITUATION AND ITS EFFECTS

The Police Accountability Board (PAB) currently has six seated members out of nine total positions and lacks an appointed alternate. Despite these vacancies, the PAB has remained committed to its mission of promoting police accountability and transparency. The resolutions being presented seek to formally recognize the dedication and contributions of PAB members since the Board's inception. By highlighting their efforts, these resolutions aim to reinforce public awareness and engagement in the PAB's work, strengthening community trust and support for civilian oversight.

## BACKGROUND

The Police Accountability Board (PAB) is comprised of nine members. Each member was nominated by the Mayor or a City Councilmember and approved by the full Council. Board member terms end four years after appointment, or upon the expiration of the nominating City Councilmember's term, whichever is earlier.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

## RATIONALE FOR RECOMMENDATION

The PAB presents these recommendations for the City Council, aimed at honoring and recognizing former Board Members service and contribution to the Police Accountability Board.

## CONTACT PERSON

Hansel A. Aguilar, Director,

Office of the Director of Police Accountability (510) 981-4950

**RESOLUTION NO. 2025-0001**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING REGINA HARRIS FOR HER SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Regina Harris served on the PAB from July 7, 2021 to February 5, 2025 and was one of the originally appointed members to serve on the PAB, provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during her tenure, Regina Harris demonstrated exemplary leadership and commitment to the Board's work, including serving as Vice Chair, where she played a crucial role in guiding discussions, facilitating meetings, and strengthening the Board's decision-making processes; and

WHEREAS, Regina Harris contributed significantly to key initiatives, including her participation in the Body-Worn Camera (BWC) subcommittee, where she provided insight and recommendations to enhance transparency and accountability in policing practices; and

WHEREAS, Regina Harris was a steadfast advocate for community concerns, ensuring that the voices of Berkeley residents were represented in discussions on police oversight, policy development, and systemic reform; and

WHEREAS, her dedication, insight, and leadership have had a lasting impact on the Board's work and the broader goals of police accountability in the City of Berkeley;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Regina Harris for her outstanding contributions and unwavering commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Regina Harris for her leadership and service, recognizing her positive impact on the Board's initiatives and the Berkeley community.

**RESOLUTION NO. 2025-0001**

BE IT FURTHER RESOLVED, this resolution be presented to Regina Harris as a token of our sincere appreciation and recognition for her invaluable service to police accountability in the City of Berkeley.

BE IT FURTHER RESOLVED, this resolution be presented to Regina Harris as a token of our sincere appreciation and recognition for her invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of her contributions.

**Adopted on:** 2/19/2025

**RESOLUTION VOTING RESULTS**

| Board Member | Aye | No | Abstain | Absent |
|---|---|---|---|---|
| Calavita | x | | | |
| Cayetano | x | | | |
| Leftwich | x | | | |
| Williams | | | | x |
| Wilson | x | | | |

**Total:** 4 Ayes, 1 Absent

**CERTIFICATION**

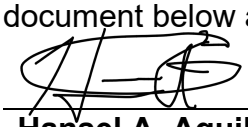
I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Joshua Cayetano

**Joshua Cayetano,**
Chair of the Police Accountability Board

2/19/2025
Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.



**Hansel A. Aguilar,**
Director of Police Accountability &
Secretary to the Police Accountability
Board

2/19/2025
Date

RESOLUTION NO. 2025-0002

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING BRENT BLACKABY FOR HIS SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Brent Blackaby served on the PAB from September 12, 2023 to December 6, 2024 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during his tenure, Brent Blackaby demonstrated a strong commitment to improving the mechanisms for recognizing positive contributions within the Berkeley Police Department, advocating for a revised commendations process that fairly and transparently acknowledges officers' notable efforts in serving the community; and

WHEREAS, his thoughtful approach to oversight and policy reform contributed to strengthening public trust in law enforcement accountability and reinforcing the PAB's role in fostering fair and effective police practices; and

WHEREAS, Brent Blackaby resigned from the PAB to continue his public service as a member of the Berkeley City Council, demonstrating his ongoing dedication to civic engagement and the betterment of the Berkeley community; and

WHEREAS, his tenure on the PAB left a lasting impact on its operations, setting a foundation for continued progress in police oversight and community relations;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Brent Blackaby for his outstanding service, leadership, and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Brent Blackaby for his efforts to enhance accountability, transparency, and positive engagement between law enforcement and the community.

BE IT FURTHER RESOLVED, this resolution be presented to Brent Blackaby as a token of our sincere appreciation and recognition for his invaluable service to police

**RESOLUTION NO. 2025-0002**

accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

**Adopted on:** 2/19/2025

**RESOLUTION VOTING RESULTS**

| Board Member | Aye | No | Abstain | Absent |
|---|---|---|---|---|
| Calavita | x | | | |
| Cayetano | x | | | |
| Leftwich | x | | | |
| Williams | | | | x |
| Wilson | x | | | |

**Total:** 4 Ayes, 1 Absent

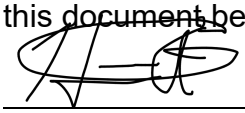
**CERTIFICATION**

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Joshua Cayetano — 2/19/2025

**Joshua Cayetano,** Date
Chair of the Police Accountability Board

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.



2/19/2025

**Hansel A. Aguilar,** Date
Director of Police Accountability &
Secretary to the Police Accountability
Board

**RESOLUTION NO. 2025-0003**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING JOHN "CHIP" MOORE FOR HIS SERVICE AND LEADERSHIP IN CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, John "Chip" Moore served on the PAB from July 7, 2021 to February 5, 2025 and was one of the originally appointed members to serve on the PAB, demonstrating an unwavering commitment to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, John "Chip" Moore served two consecutive terms as Chair of the PAB, guiding the Board and the Office of the Director of Police Accountability through a crucial developmental phase; and

WHEREAS, under his leadership, the PAB successfully submitted its Permanent Regulations, which are currently undergoing the meet and confer process, ensuring a solid framework for civilian oversight and law enforcement accountability; and

WHEREAS, Chair Moore oversaw the finalization of the *BERKELEY POLICE DEPARTMENT TEXTING OFFENSES: An Independent Investigation by the Police Accountability Board* (commonly referred to as the Downtown Task Force Report), demonstrating his steadfast commitment to transparency and accountability in law enforcement oversight; and

WHEREAS, his tenure was marked by significant milestones that strengthened the Board's role in police accountability, setting a strong foundation for the newly elected Chair to build upon; and

WHEREAS, John "Chip" Moore's leadership, dedication, and expertise have left a lasting impact on the Board's work and the broader goals of police accountability in the City of Berkeley;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to John "Chip" Moore for his outstanding service, leadership, and commitment to the mission of civilian oversight.

**RESOLUTION NO. 2025-0003**

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to John "Chip" Moore for his exceptional contributions, recognizing his role in shaping a strong and effective oversight body.

BE IT FURTHER RESOLVED, this resolution be presented to John "Chip" Moore as a token of our sincere appreciation and recognition for his invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

**Adopted on:** 2/19/2025

**RESOLUTION VOTING RESULTS**

| Board Member | Aye | No | Abstain | Absent |
|---|---|---|---|---|
| Calavita | x | | | |
| Cayetano | x | | | |
| Leftwich | x | | | |
| Williams | | | | x |
| Wilson | x | | | |

**Total:** 4 Ayes, 1 Absent

**CERTIFICATION**

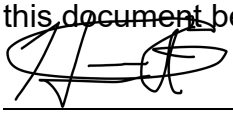
I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Joshua Cayetano

**Joshua Cayetano,**
Chair of the Police Accountability Board

2/19/2025
Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.



**Hansel A. Aguilar,**
Director of Police Accountability &
Secretary to the Police Accountability Board

2/19/2025
Date

**RESOLUTION NO. 2025-0004**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING ALEXANDER MOZES FOR HIS SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Alexander Mozes served on the PAB from November 7, 2023 to February 5, 2025 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during his tenure, Alexander Mozes distinguished himself as a thoughtful and engaged member of the Board, contributing significantly to key discussions and policy initiatives; and

WHEREAS, Alexander Mozes conducted an independent and in-depth analysis of the Fair and Impartial Policing (FIP) report, providing valuable insights and recommendations that strengthened the Board's understanding and oversight of bias and policing practices in Berkeley; and

WHEREAS, Alexander Mozes was a vocal and thoughtful critic of the Specialized Care Unit (SCU), raising important considerations about its implementation, effectiveness, and alignment with the community's needs and expectations; and

WHEREAS, his dedication, analytical contributions, and unwavering commitment to meaningful oversight have had a lasting impact on the Board's work and the broader goals of police accountability in the City of Berkeley;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Alexander Mozes for his outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Alexander Mozes for his leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Alexander Mozes as a token of our sincere appreciation and recognition for his invaluable service to police

**RESOLUTION NO. 2025-0004**

accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

**Adopted on:** 2/19/2025

**RESOLUTION VOTING RESULTS**

| Board Member | Aye | No | Abstain | Absent |
|---|---|---|---|---|
| Calavita | x | | | |
| Cayetano | x | | | |
| Leftwich | x | | | |
| Williams | | | | x |
| Wilson | x | | | |

**Total:** 4 Ayes, 1 Absent

**CERTIFICATION**

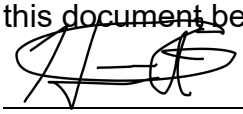
I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Joshua Cayetano

**Joshua Cayetano,**
Chair of the Police Accountability Board

2/19/2025
Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.



**Hansel A. Aguilar,**
Director of Police Accountability &
Secretary to the Police Accountability Board

2/19/2025
Date

**RESOLUTION NO. [2025-0005]**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING MICHAEL CHANG FOR HIS SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Michael Chang served on the PAB from July 1, 2021 to September 14, 2022 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during his tenure, Michael Chang served as the first Vice Chair and later became the second Chair of the PAB demonstrating exemplary leadership and commitment to the Board's work; and

WHEREAS, Michael Chang served on the initial iterations of the PAB's Regulations Subcommittee, contributing to the development of permanent regulations for handling complaints against sworn officers of the department; and

WHEREAS, Michael Chang stepped down from the PAB to continue his public service as Vice President of the Berkeley Board of Education;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Michael Chang for his outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Michael Chang for his leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Michael Chang as a token of our sincere appreciation and recognition for his invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

**Adopted on:** 3/5/2025

**RESOLUTION NO. [2025-0005]**

## RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain |
|---|---|---|---|
| Calavita | x | | |
| Cayetano | x | | |
| Leftwich | x | | |
| Williams | x | | |
| Wilson | x | | |

**Total:** 5 Ayes, 0 No

## CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Joshua Cayetano — 3/5/2025

**Joshua Cayetano,**
Chair of the Police Accountability Board

Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

3/5/2025

**Hansel A. Aguilar,**
Director of Police Accountability &
Secretary to the Police Accountability Board

Date

**RESOLUTION NO. [2025-0006]**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING NATHAN MIZELL FOR HIS SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Nathan Mizell served on the PAB from June 30, 2021 to December 7, 2022 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during his tenure, Nathan Mizell demonstrated his leadership as Vice Chair of the PAB where he played a crucial role in guiding discussions, facilitating meetings, and strengthening the Board's decision-making processes; and

WHEREAS, Nathan Mizell served on the PAB's Director Search Subcommittee, Fixed Surveillance Camera Policy Subcommittee, and Chief of Police Selection Process Subcommittee;

WHEREAS, Nathan Mizell stepped down from the PAB to serve on the Berkeley Rent Board;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Nathan Mizell for his outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Nathan Mizell for his leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Nathan Mizell as a token of our sincere appreciation and recognition for his invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

**Adopted on:** 3/5/2025

**RESOLUTION NO. [2025-0006]**

## RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain |
|---|---|---|---|
| Calavita | x | | |
| Cayetano | x | | |
| Leftwich | x | | |
| Williams | x | | |
| Wilson | x | | |

**Total:** 5 Ayes, 0 No

## CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Joshua Cayetano — 3/5/2025

**Joshua Cayetano,** Date
Chair of the Police Accountability Board

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

3/5/2025

**Hansel A. Aguilar,** Date
Director of Police Accountability &
Secretary to the Police Accountability
Board

**RESOLUTION NO. [2025-0007]**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING ISMAIL RAMSEY FOR HIS SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Ismail Ramsey served on the Berkeley Police Review Commission; and

WHEREAS, Ismail Ramsey served on the PAB from June 10, 2021 to March 8, 2023 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during his tenure, Ismail Ramsey served as the inaugural Chair of the PAB, guiding the Board and the Office of the Director of Police Accountability through a crucial developmental phase; and

WHEREAS, Ismail Ramsey served on the PAB's Fair and Impartial Policing Implementation Subcommittee, Fixed Surveillance Camera Policy Subcommittee, and Controlled Equipment Use & Reporting Subcommittee, making meaningful contributions to their work; and

WHEREAS, Ismail Ramsey stepped down from the PAB to serve as U.S. Attorney for the Northern District of California, where he quickly made a significant impact in ensuring the safety of our Berkeley community and the broader region;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Ismail Ramsey for his outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Ismail Ramsey for his leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Ismail Ramsey as a token of our sincere appreciation and recognition for his invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

**Adopted on:** 3/5/2025

**RESOLUTION NO. [2025-0007]**

## RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain |
|---|---|---|---|
| Calavita | x | | |
| Cayetano | x | | |
| Leftwich | x | | |
| Williams | x | | |
| Wilson | x | | |

**Total:** 5 Ayes, 0 No

## CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Joshua Cayetano — 3/5/2025

**Joshua Cayetano,** Date
Chair of the Police Accountability Board

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

3/5/2025

**Hansel A. Aguilar,** Date
Director of Police Accountability &
Secretary to the Police Accountability
Board

**RESOLUTION NO. [2025-0008]**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING DEBORAH LEVINE FOR HER SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Deborah Levine served on the PAB from June 16, 2021 to May 10, 2023 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during her tenure, Deborah Levine brought her expertise as a Criminal Law Attorney to the PAB, offering valuable insights that enriched the PAB's work; and

WHEREAS, Deborah Levine served on the PAB's Director Search Subcommittee, Mental Health Response Subcommittee, Drone Use Policy Subcommittee, Body-Worn Camera Policy Subcommittee, Conflict of Interest Subcommittee, and Chief of Police Selection Process Subcommittee; and

WHEREAS, Deborah Levine stepped down from the PAB upon the completion of her term;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Deborah Levine for her outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Deborah Levine for her leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Deborah Levine as a token of our sincere appreciation and recognition for her invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of her contributions.

**Adopted on:** 3/5/2025

**RESOLUTION NO. [2025-0008]**

## RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain |
|---|---|---|---|
| Calavita | x | | |
| Cayetano | x | | |
| Leftwich | x | | |
| Williams | x | | |
| Wilson | x | | |

**Total:** 5 Ayes, 0 No

## CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Joshua Cayetano — 3/5/2025

**Joshua Cayetano,** Date
Chair of the Police Accountability Board

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

3/5/2025

**Hansel A. Aguilar,** Date
Director of Police Accountability &
Secretary to the Police Accountability
Board

**RESOLUTION NO. [2025-0009]**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING CHERYL OWENS FOR HER SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Cheryl Owens served on the PAB from June 10, 2021 to March 10, 2023 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during her tenure, Cheryl Owens served as the first subcommittee chair of Policy and Practices Subcommittee related to the Downtown Task Force and Bike Unit Allegations, establishing a crucial foundation for the subcommittee's work; and

WHEREAS, Cheryl Owens served on the Regulations Subcommittee, Fair and Impartial Policing Implementation Subcommittee, and the Policy and Practices Subcommittee related to the Downtown Task Force and Bike Unit Allegations; and

WHEREAS, Cheryl Owens brought her extensive experience as a civilian police career employee to the PAB, providing a unique perspective rooted in the City Charter and promoting collaboration among stakeholders; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Cheryl Owens for her outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Cheryl Owens for her leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Cheryl Owens as a token of our sincere appreciation and recognition for her invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of her contributions.

**Adopted on:** 3/5/2025

**RESOLUTION NO. [2025-0009]**

## RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain |
|---|---|---|---|
| Calavita | x | | |
| Cayetano | x | | |
| Leftwich | x | | |
| Williams | x | | |
| Wilson | x | | |

**Total:** 5 Ayes, 0 No

## CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Joshua Cayetano

**Joshua Cayetano,**
Chair of the Police Accountability Board

3/5/2025
Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

**Hansel A. Aguilar,**
Director of Police Accountability &
Secretary to the Police Accountability Board

3/5/2025
Date

BERKELEY CITY AUDITOR

02a.33

INFORMATION CALENDAR
April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor

Subject: City Auditor's Office 2024 Peer Review Results

## INTRODUCTION

The Association of Local Government Auditors (ALGA) has again issued an opinion that the City Auditor's Office's internal quality control system was suitably designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for the period of November 1, 2021 to October 31, 2024.

## CURRENT SITUATION AND ITS EFFECTS

Auditors from Washington County, OR and Jackson County, OR completed an External Quality Control Review (peer review) of our internal quality control system. They followed the *ALGA Peer Review Guide* standards and guidelines in examining our system, including our efforts for ongoing monitoring and improvement.

The peer reviewers examined three audits from the peer-review period. They also reviewed a selection of our non-audit service assessments in which we evaluated the impact of those services on our audits and identified safeguards for maintaining independence. It is in the opinion of the peer review team that our internal quality control system was adequately designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for the period of November 1, 2021 to October 31, 2024.

### *Strengthening Auditor Accountability and Oversight*

The peer reviewers noted one area where our office can strengthen our internal control systems. The Payroll Audit Division is part of the City Auditor's office and performs important payroll functions. Audits require independence and the reviewers noted that due to independence issues, we are unable to conduct performance audits of payroll, which is an important city function. To ensure that the Payroll Audit Division operates effectively and complies with relevant standards, our office has periodically requested independent external

audits of the Division. There is currently an audit in progress that is due to be released later this year.

*City Auditor's Office Areas of Excellence*

The peer review team recognized our commitment to a high-standard of audit quality by identifying areas in which we excel:

- The office has an excellent tone at the top, and they were particularly impressed with the office's dedication to continuous improvement, staff support, and positive supervision.
- The office has very qualified audit staff and has ensured their skills are maintained though training.
- Audit workpapers were very organized and audit procedures were well documented and effectively indexed. They particularly appreciated that we develop an understanding of the needs of diverse stakeholders when conducting our audits.

The efforts of many led to the peer reviewer's positive opinion and our ability to demonstrate a commitment to audit excellence. I would like to thank the following for their current and past contributions:

- Ann-Marie Hogan, Former City Auditor whose unwavering belief in the value of *Government Auditing Standards* provided continuous support of a well-designed and effective internal quality control system.
- I would also like to thank my staff: Erin Mullin, Whistleblower Program Manager; Caitlin Palmer, Audit Manager; Pauline Miller, Auditor II; Kendle Kuechle, Auditor II; and Katie Wysong, Auditor I.

BACKGROUND

The Berkeley City Charter requires our audits to be performed in accordance with government auditing standards and those standards require that we undergo a peer review every three years. The City Auditor's Office has consistently passed peer reviews since its first review in 1997.

Government Auditing Standards help ensure that government auditors maintain competence, integrity, objectivity, and independence in planning, conducting, and reporting their work. Auditors enhance their credibility by following standards so their work leads to improved government management, decision making, and oversight.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The peer review team maintained workpapers in electronic format, which greatly reduced the use of paper and ink. There are no other identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

We will explore ways to address the challenge raised by the peer reviewers to allow for future audits of payroll in compliance with the *Government Auditing Standards*.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None known at this time.

CONTACT PERSON

Jenny Wong, City Auditor (510) 981-6750

Attachments:

1: 2024 External Quality Control Review of the Berkeley City Auditor's Office Final Report

# External Quality Control Review

of the

## Berkeley City Auditor's Office

Conducted in accordance with guidelines of the

## Association of Local Government Auditors

for the period November 1, 2021 to October 31, 2024

# Association of Local Government Auditors

February 26, 2025

Ms. Jenny Wong
Berkeley City Auditor
2180 Milvia Street, 3rd Floor
Berkeley, CA 94704

Dear Ms. Wong,

We have completed a peer review of the Berkeley City Auditor's Office for the period November 1, 2021 to October 31, 2024. In conducting our review, we followed the standards and guidelines contained in the *Peer Review Guide for Assessing Conformance with Government Auditing Standards* published by the Association of Local Government Auditors (ALGA).

We reviewed the internal quality control system of your audit organization and conducted tests to determine whether your internal quality control system was adequately designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* issued by the Comptroller General of the United States and applicable legal and regulatory requirements. Our procedures included:

- Reviewing the audit organization's written policies and procedures.
- Reviewing internal monitoring procedures.
- Reviewing a sample of engagements and working papers.
- Reviewing documents related to independence, training, and development of auditing staff.
- Interviewing audit staff and management to assess their understanding of and compliance with relevant quality control policies and procedures.

Due to variances in individual performance and judgment, compliance does not imply adherence to standards in every case but does imply adherence in most situations. Organizations can receive a rating of pass, pass with deficiencies, or fail. The City of Berkeley Auditor's Office has received a rating of pass.

Based on the results of our review, it is our opinion that the Berkeley City Auditor's Office's internal quality control system was adequately designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* and applicable legal and regulatory requirements for engagements during the period November 1, 2021 through October 31, 2024.

We have prepared a separate letter providing findings and recommendations to further strengthen your internal quality control system.

Kristine Adams-Wannberg
County Auditor
Washington County, Oregon

Nicole Rollins
County Auditor
Jackson County, Oregon

| Upcoming Worksessions and Special Meetings | |
|---|---|
| Scheduled Dates | |
| April 15 (4pm) | Adoption of Cal Fire Map<br>Adoption of Fire Code Amendments |
| April 22 (6pm) | City Council ZAB Appeal Hearing for UA Theater Project |
| May 6 (4pm) | Brown Act Training |
| April 29 (4pm) | Presentation on City's Unfunded Liabilities |
| May 13 (6pm) | Evacuation Study and Response Times |

## Unscheduled Presentations and Special Meetings

1. Council Referral: Social Housing (June or July)

## Future Information Reports

1. Reimagining Public Safety Update
2. Affordable Housing Fee Feasibility Study
3. Berkeley Fire Department Annual Report
4. Greenhouse Gas Inventory / Climate Action Plan Update

| | |
|---|---|
| | **City Council Referrals to the Agenda & Rules Committee and Unfinished Business for Scheduling** |
| | **None** |

# CITY CLERK DEPARTMENT
## WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL

| Address | Board/ Commission | Appeal Period Ends | Public Hearing |
|---|---|---|---|
| **NOD – Notices of Decision** | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| **Public Hearings Scheduled** | | | |
| 3000 Shattuck Avenue (construct 10-story mixed-use building) | ZAB | | 3/25/2025 |
| 2274 Shattuck Avenue (UA Theater Project) | ZAB | | 4/22/2025 |
| 1048 Keith Avenue (single-family dwelling) | ZAB | | 5/6/2025 |
| 2500-12 San Pablo Avenue/1094-98 Dwight Way (Landmark designation for Union Investment Company Building No. 1) | LPC | | 5/20/2025 |
| 1950-1998 Shattuck Avenue | ZAB | | 6/3/2024 |
| 2138 Kittredge Street | LPC | | |
| **Remanded to ZAB or LPC** | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| **Notes** | | | |
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| | | | |
| | | | |

3/25/2025

Rashi Kesarwani
Councilmember, District 1

# REVISED
# AGENDA MATERIAL

**Meeting Date:** **September 24, 2024**

**Item Number:** **Item #11**

**Item Description:** **City Council Rules of Procedure and Order Revisions**

**Submitted by:** **Rashi Kesarwani**

This revised recommendation modifies the City Council Rules of Procedure and Order Revisions presented by the City Manager and passed by the Agenda and Rules Committee.

Internal

Rashi Kesarwani
Councilmember, District 1

**ACTION CALENDAR**
September 24, 2024

**TO**: Honorable Mayor Jesse Arreguín and Members of the City Council

**FROM**: Councilmember Rashi Kesarwani (Author)

**SUBJECT**: Council Rules and Procedures Amendments

**Summary of Recommendation:**
Amend the Council Rules and Procedure in the following areas:

1) Delete change that permits three no votes to cause a Consent item to automatically shift to the Action calendar.
2) Recognize BUSD spring break in the City Council recess schedule.
3) Objectively define “Major Items.”
4) Simplify “Standards for Agenda Items.”
5) Eliminate Supplemental #3 Items.
6) Reinstate Council approval for reordering of the agenda.
7) Simplify language and require a budget referral for “Major Items.”
8) Clarify that legal and operational concerns should be discussed at policy committees.
9) Legislation introduced by a member of the Council who is no longer serving on the City Council must be resubmitted by a sitting member of the Council and reconsidered by the Agenda and Rules Committee.
10) Prohibit a speaker from speaking on the same issue twice.
11) Shorten debate on the non-debatable Consent Calendar.
12) Eliminate Appendix B, as it is not substantive.

**Issue #1: Rationale for Amendment to II.D. Council Meeting Conduct of Business**
This new rule, which requires that a Consent item is automatically moved to the Action calendar simply when three Councilmembers wish to record a no vote or abstention is a poor use of limited meeting time. Under a different rule, if at least three Council members wish to have discussion about an item on Consent, then it is moved to the Action calendar for consideration.

This new policy, as written, has the potential to cause unwarranted delay of important Action items–potentially to a future meeting. Councilmembers already have the ability to express an interest in pulling an item to Action so this change is unnecessary.

***Recommendation:***
~~With respect to Consent items, the Mayor or Councilmembers will be allowed to record their aye, nay or abstain votes on individual items or the entire Consent Calendar prior to the vote on the Consent Calendar. However, if three or more Councilmembers object to a Consent item by expressing their intent to abstain or vote no, the item shall be moved from Consent to Action.~~

**Issue #2: Rationale for Amendment to II.G. City Council Schedule and Recess Periods**
In recent years, the Council's spring recess has been adjusted to coincide with the Berkeley Unified School District's spring recess, facilitating alignment of breaks for City employees and Councilmembers. It is recommended that this alignment be formally codified in the City Council Rules of Procedures and Order.

***Recommendation***
II.G. "Regular meetings of the City Council shall be held generally two to three Tuesdays of each month except during recess periods; the schedule to be established annually by Council resolution taking into consideration holidays, Berkeley Unified School District Spring recess, and election dates.

**Issue #3 Rationale for Amendments to III. B. 11. "Major Items"**
It is essential to establish objective criteria for determining what qualifies as a "Major" action in order to ensure the integrity of the legislative process.

***Recommendation***
"Major Item" means an Agenda Item with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts submitted by the Mayor or Councilmember.

The determination of a Major Item is based on the following objective criteria:

1. In consultation with the City Manager, an item is deemed to have moderate to significant administrative, operational, or resource impacts due to an implementation timeline that would take six months or longer; or
2. An item is considered to have significant budgetary impacts if either it does not specify fiscal impacts or if the City Manager's overall budget estimate exceeds $200,000; or
3. An item is identified as having significant programmatic impacts or if existing city programming must be adjusted to accommodate the new initiative.

**Issue #4: Rationale for Amendments to III.C. "Standards for Agenda Items"**

1. The Standards for Agenda Items are overly prescriptive. Strike the unnecessary and superfluous standards. Consolidate “Review of Existing Plans, Programs, Policies and Laws and Consultation/Outreach Overview and Results” into “Background.”

2. Strike Implementation, Administration and Enforcement. This is for the City Manager to address, not City Council.

3. Since this is the *City Council’s* Rules and Procedures, reference to city contracts is unnecessary.

***Recommendation***

1. Agenda Items, other than Major Items submitted by the Mayor or any Councilmember, shall contain all relevant documentation, including the information listed below:
    - **a.** A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
    - **b.** Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
    - **c.** Recommendation of the report’s Primary Author that describes the action to be taken on the item, if applicable;
    - **d.** Fiscal impacts of the recommendation
    - **e.** A description of the current situation and its effects;
    - **f.** Background information as needed;
    - **g.** Rationale for recommendation;
    - **h.** Alternative actions considered;
    - ~~**i.** For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items);~~
    - **j.** Person or persons to contact for further information, with telephone number;
    - **k.** Additional information and analysis, as may be required.
    - **l.** Environmental sustainability and climate impacts.

It is recommended that Regular Item reports also include, to the exten~~d~~t relevant, the points of analysis in Major Council Item Standards in Section C.

2. Major Items submitted by the Mayor or any Councilmember shall contain all relevant documentation, including the information listed below ~~and more fully described in Appendix B~~, Guidelines for City Councilmember/Mayor Major Items:
    - **a. <u>Title</u>**
        - i. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.
    - **b. <u>Consent/Action/Information Calendar</u>**
        - i. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

c. **Recommendation**
   i. A clear, succinct statement of actions to be taken. More lengthy/detailed actions can be detailed within the item and incorporated by reference.

d. **Summary Statement/Current Situation and its effects**
   i. A short resume of the circumstances that give rise to the need for the recommended actions.

e. **Background**
   i. A full discussion of the evidence, history, circumstances and concerns to be addressed by the item. Background may include stakeholder input and review of existing plans, programs, policies, and law.

~~f. **Review of Existing Plans, Programs, Policies and Laws**~~
   ~~i. Review, identification, and discussion of relevant/applicable City of Berkeley, State, and other relevant Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from, or run contrary to them.~~

g. **Actions/Alternatives Considered**
   i. A listing of solutions/measures that other jurisdictions, or advocates, experts, or organizations have studied or adopted to address the same or similar subject matter, the range of actions considered, and the reasons why those solutions/measures are proposed to be adopted, modified, or rejected.

~~h. **Consultation/Outreach Overview and Results**~~
   ~~i. Review/listing of external and internal City of Berkeley stakeholders that were consulted and reports, articles, books, websites and other materials that were consulted and discussion of approaches that were accepted, modified, or rejected.~~

i. **Rationale for Recommendation**
   i. A clear and concise statement that explains why the proposed policy is the best alternative. ~~as to whether t~~The item should explain if proposed~~s~~ actions (a) conform to, clarify or extend, (b) make major or minor changes/amendments, (c) create an exception, or (d) reverse/go contrary to existing City of Berkeley Plans, Programs, Policies and Laws, or (e) create largely or entirely new Plans, Programs, Policies or Laws.

~~j. **Implementation, Administration and Enforcement**~~
   ~~i. A discussion of how the recommended action would be implemented, administered and enforced by the City of Berkeley.~~

k. **Environmental Sustainability and Climate Impacts**
   i. A discussion of the impacts of recommended actions, if any, on the environment and the recommendation's relationship to the City's Climate Action, Resilience, and other sustainability goals.

l. **Fiscal Impacts**
   i. A review of the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as expected or potential direct and indirect costs.

m. **Outcomes and Evaluation***
   i. A statement of the specific outcomes expected and what reporting and/or evaluation is recommended to ensure the outcomes are being achieved.

n. **Contact Information**

o. **Attachments/Supporting Materials**

**Issue #5: Rationale for Amendments to III.5.c Submission of Supplemental and Revised Agenda Material**

This section pertaining to Supplemental Communications #3 should be removed. To promote transparency, any revisions or supplemental materials submitted less than 24 hours before a meeting should not be allowed.

***Recommendation***

~~After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 40 copies of the supplemental/revised material to the City Clerk for distribution at the meeting and submitting the material electronically to the City Clerk. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for public review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the Agenda Item in order for the material to be considered.~~

**Issue #6 Rationale for Amendments to III.F. "Agenda Sequence and Order of Business"**

The September 24, 2024 version eliminates the consent of the Council and allows the Chair sole discretion. The Chair should have approval from the Council with regard to agenda sequence.

***Recommendation***

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

**Issue #7: Rationale for Amendments to 3.H. "Major Items"**

The current language is confusing and unclear. This section should also mandate that Major Items must include a budget referral.

***Recommendation***

The Agenda & Rules Committee must take action on an item as prescribed in Chapter III.D. at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee, except that an item meeting the definition of a Major Item that also includes a budget referral may be referred to both the Budget & Finance Committee in the form of a notice that a budget referral is under consideration at another Committee, and one other Policy Committee for subject matter review.

The Agenda & Rules Committee may ~~only~~ assign the item to a single Policy Committee. ~~except that~~ However, if an item ~~meeting the definition of~~ qualifies as a Major Item ~~that also includes a budget referral may be referred to both,~~ it must include a budget referral and be sent to the Budget & Finance Committee in the form of a notice that a budget referral is under consideration at another Committee, and one other Policy Committee for subject matter review.

**Issue #8: Rationale for Amendments to III.4.h "Functions of the Policy Committee"**

Report standards are already listed above in III.C. Instead of "reports" including operational and legal analysis that may be beyond the subject matter expertise of a Council office, the policy committee should discuss with appropriate staff, budget implications, administrative feasibility, and legal considerations.

***Recommendation***

~~Reports leaving a~~ Policy Committees must adequately ~~include~~ discuss budget implications, administrative feasibility, basic legal concerns, and staff resource demands before sending reports to the full Council. ~~in order to~~ This allows for informed consideration by the full Council.

**Issue #9: Rationale for Amendments to "Agenda Items Authored by Former Mayors and Councilmembers"**

If a Councilmember wants to adopt an item originally submitted by a former member of the Council, that item must be resubmitted for reconsideration. It cannot be fast-tracked for a vote if the former official is no longer on the Council.

***Recommendation***

**Agenda Items Authored by Former Mayors and Councilmembers**

Upon the date that the elected official leaves office, all Agenda Items in the legislative process for which the former official is the Primary Author shall be placed on the next available draft Council Agenda to be reviewed by the Agenda & Rules Committee. The Agenda & Rules Committee shall then place the items on the Council Agenda under consideration or the next Council Agenda. At the Council meeting where the items appear on the Agenda, the Mayor or any Councilmember may assume primary authorship of any item authored by the former official. If the item is adopted by a member of the Council, it must be resubmitted and reconsidered at a future Agenda and Rules Committee. ~~The Council may then, by motion and vote, take any legislative action permitted under the Rules of Procedure~~. If any of the items from the former

official are not assumed by the Mayor or any Councilmember, the Council may then, by motion and vote, take any legislative action permitted under the Rules of Procedure, except that the item may not be referred to a policy committee.

**Issue #10: Rationale for Amendments to IV.2. "Public Comment on Consent Calendar and Information Items"**

It is redundant to permit a speaker to speak twice on the same matter within one Council meeting.

***Recommendation***

~~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.~~

**Issue #11: Rationale for Amendments to V.G "Procedural Matters: Debate Limited"**

The purpose of a Consent calendar is to facilitate efficient decision-making without extensive discussion. Allowing each Councilmember and the Mayor up to seven minutes each of comment could extend the duration of the consent calendar to more than one hour and defeats the purpose of a Consent calendar.

***Recommendation***

**G. Debate Limited**

For the Consent Calendar, the Mayor and Councilmembers will ~~initially~~ have three ~~up to five~~ minutes each to make comments. ~~After all members of the Council have spoken (or passed) and after public comment, members will each have two additional minutes to discuss the Consent Calendar.~~

**Issue #12 Rationale for Amendments to Appendix B "Guidelines for City Council/Mayor Major Items"**

See Issue #4 Rationale above. This section is unnecessary, given the "Standards for Agenda Items" section.

***Recommendation***

Delete Appendix B (p.44-47).

**CONTACT PERSON**

Rashi Kesarwani (510) 981-7110

Office of the City Manager

# 11

ACTION CALENDAR
September 24, 2024
*(Continued from the September 10, 2024 meeting)*

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

Submitted By: Mark Numainville, City Clerk

Subject: City Council Rules of Procedure and Order Revisions

## RECOMMENDATION
Adopt a Resolution revising the City Council Rules of Procedure and Order to clarify and reorganize existing language, make technical corrections related to account for hybrid meetings; incorporate temporary provisions from Appendix C into the main body of the document; add revisions recommended by the Open Government Commission and approved by Council; Add new language and update existing language related to the legislative process recommended by the Agenda & Rules Committee; and rescinding any preceding amendatory resolutions.

## POLICY COMMITTEE RECOMMENDATION
On August 26, 2024, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Arreguin) to send the proposed amendments to the Rules of Procedure, as discussed and further amended on August 26, 2024, to the City Council with a positive recommendation. Vote: Ayes – Hahn, Arreguin; Noes – None; Abstain – Wengraf.

## FISCAL IMPACTS OF RECOMMENDATION
None.

## CURRENT SITUATION AND ITS EFFECTS
This review and update of the Rules of Procedure was precipitated several factors, 1) the end of the state-declared emergency and the return to in-person meetings in the hybrid format; 2) approval of the Open Government Commission (OGC) recommendations by Council on May 7, 2024; and 3) the legislative redesign process that has been discussed for several years by the full Council and at the Agenda & Rules Committee. In addition, all defined terms have been capitalized for consistency.

During the review, other technical corrections and updates were identified that will keep the Rules of Procedure current and effective. The updates are shown in track changes with explanatory comments in Attachment 2. The primary categories of updates are noted below.

(Continued from the September 10, 2024 meeting)

- Add new amendments to the legislative process related to “Major Items” submitted by Councilmembers, the authority of the Agenda & Rules Committee with regards to items submitted by the Mayor and Council, and process improvements for policy committees.

- Incorporate the recommendations from the OGC that Council adopted on May 7, 2024 related to public comments, consideration of consent calendar items, and meeting/agenda management.

- Modify the noticing procedures for ad hoc committees to align with the rules in the Brown Act, and for consistency with City boards and commissions.

- Update the legislative process rules to account for the new Charter Offices of City Attorney and Director of Police Accountability, and properly account for the role of the Auditor in the process.

- Update public comment procedures to account for speakers participating both remotely and in-person under the hybrid meeting model.

- Remove Appendix C, specific to all-remote pandemic meetings, and incorporate certain successful provisions into the main body regarding moving items to the Action Calendar, public comments, and Council debate procedures.

## BACKGROUND

The City Council Rules of Procedure and Order governs the duties of the Council, the conduct of meetings, the agenda, procedural matters and facilities. The rules have been amended as necessary over time to improve the function of the legislative process and the conduct of City Council meetings.

## 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 changes to the Rules are intended to keep the document current and directly applicable to Council meeting format and procedure.

## ALTERNATIVE ACTIONS CONSIDERED

The Council may adopt all, some, or none of the proposed amendments.

## CONTACT PERSON

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

Attachments:
1: Resolution
    Exhibit A: City Council Rules of Procedure and Order
2: Track Changes Version - City Council Rules of Procedure and Order

Office of the City Manager

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

RE-ADOPTING THE CITY COUNCIL RULES OF PROCEDURE

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council Rules of Procedure and Order attached hereto as Exhibit A shall govern all proceedings of the City Council therein described, subject to the exception and deviations provided for in such rules.

BE IT FURTHER RESOLVED that violation of these rules shall not be construed as a penal offense, except as provided for by the adopted Rules of Procedure.

BE IT FURTHER RESOLVED that this update is to clarify and reorganize existing language, make technical corrections related to hybrid meetings; incorporate temporary provisions from Appendix C into the main body of the document; add certain new provisions approved by Council; and make changes related to improvements in the legislative process.

BE IT FURTHER RESOLVED that all preceding amendatory resolutions are hereby rescinded.

Exhibit A: City Council Rules of Procedure and Order

Exhibit A

# The Berkeley City Council
# Rules of Procedure and Order

Adopted by Resolution No. ##,###–N.S.

Effective [Date]

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# I. DUTIES

## A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

## B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

## C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

## D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set a limit on the speaking time allotted to Councilmembers during Council discussion.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

## E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

## F. Requests for Technical Assistance and/or Reports

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

# II. MEETINGS

## A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting Agenda and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair. In the absence of the two officers specified in this section, the Councilmember present with the longest period of Council service shall preside.

## B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

## C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

## D. Council Meeting Conduct of Business

The Agenda for the regular business meetings shall include the Order of Business described in Chapter III.F. Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) on Action will be heard.

Three or more members of the City Council must agree to pull an item from the Consent or Information Calendar for it to move to Action. Absent at least three members concurring, the item will stay on the Consent or Information Calendar.

With respect to Consent items, the Mayor or Councilmembers will be allowed to record their aye, nay or abstain votes on individual items or the entire Consent Calendar prior to the vote on the Consent Calendar. However, if three or more Councilmembers object to a Consent item by expressing their intent to abstain or vote no, the item shall be moved from Consent to Action.

Moving an item from the Action Calendar to the Consent Calendar requires the unanimous consent of the entire City Council.

A public hearing that is not expected to be lengthy may be placed on the Agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the Agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

The Council will endeavor to inform meeting attendees of the approximate time for high interest items. In addition, the Council will make best efforts to determine if items should be carried over to future meetings earlier in the meeting rather than later.

## E. Adjournment

No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific Agenda Items to be covered and shall specify in which order these items shall be handled.

Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

## F. Unfinished Business

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council Agenda. The 60 day period is tolled during a Council recess.

## G. City Council Schedule and Recess Periods

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month except during recess periods; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

A recess period is defined as a period of time longer than 21 days without a regular meeting of the Council.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the Agenda & Rules Committee meeting for the last regular meeting before a Council

recess and this authority shall extend up to the date of the Agenda & Rules Committee meeting for the first regular meeting after the Council recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

## H. Pledge of Allegiance to the Flag

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the Ceremonial Calendar will be the Pledge of Allegiance.

## I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from residents, related commissions, and other groups, as appropriate to the charge or responsibilities of such subcommittee. Ad hoc subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

# III. AGENDA

## A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the Agenda of the meeting and posted in accordance with Section III.E.2. Exceptions to this rule are limited to circumstances listed in Section III.E.4.b and items continued from a previous meeting and published on a revised Agenda.

## B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the Agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, a Charter Officer, the Auditor, or any board/commission/committee created by the City Council or City Charter, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from a Charter Officer concerning any item to be acted upon by the Council shall be submitted as a report on the Agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney-client communication concerning a litigation matter. Council Agenda Items are limited to a maximum of four Authors and Co-Sponsors, in any combination that includes at least one Author.

   Authors must be listed in the original item as submitted by the Primary Author. Co-Sponsors may only be added by the Primary Author (1) at the Agenda Committee meeting where the item is placed on a Council Agenda; or (2) after the item has been placed on a Council Agenda, through the Supplemental process, or (3) at the Council meeting where the item appears on the Agenda.

2. “Author” means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.

3. “Primary Author” means the Mayor or Councilmember listed first on the item. The Primary Author is the sole contact for the City Manager with respect to the item. Communication with other Authors and Co-Sponsors, if any, is the responsibility of the Primary Author.

4. “Co-Sponsor" means the Mayor or other Councilmembers who wish to indicate their strong support for the item, but are not Authors, and are designated by the Primary Author to be Co-Sponsors of the Council Agenda Item.

5. "Agenda" means the compilation of the descriptive titles of Agenda Items submitted to the City Clerk, arranged in the sequence established in Section III.F hereof.

6. "Packet" means the Agenda plus all of its corresponding Agenda Items.

7. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:

    a) A work stoppage or other activity which severely impairs public health, safety, or both exists;

    b) A crippling disaster, which severely impairs public health, safety or both exists.

    c) Notice of the Council's proposed consideration of any such Emergency Matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

8. “Continued Business” means Items carried over from a prior Agenda of a meeting occurring 11 or fewer days earlier.

9. "Old Business" means Items carried over from a prior Agenda of a meeting occurring more than 11 days earlier.

10. “Charter Officer” means the City Manager, City Attorney, and the Director of Police Accountability.

11. “Major Item” means an Agenda Item with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts submitted by the Mayor or any Councilmember.

12. “Regular Item” means any Agenda Item not classified as a Major Item.

## C. Standards for Agenda Items

1. Agenda Items, other than Major Items submitted by the Mayor or any Councilmember, shall contain all relevant documentation, including the information listed below:

    i. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;

    ii. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;

    iii. Recommendation of the report’s author that describes the action to be taken on the item, if applicable;

    iv. Fiscal impacts of the recommendation;

    v. A description of the current situation and its effects;

    vi. Background information as needed;

    vii. Rationale for recommendation;

viii. Alternative actions considered;

ix. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items);

x. Person or persons to contact for further information, with telephone number;

xi. Additional information and analysis as may be required.

xii. Environmental sustainability and climate impacts.

It is recommended that Regular Item reports also include, to the extend relevant, the points of analysis in Major Council Item Standards in Section C.2.

2. Major Items submitted by the Mayor or any Councilmember shall contain all relevant documentation, including the information listed below and more fully described in Appendix B, Guidelines for City Councilmember/Mayor Major Items:

**i. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**ii. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**iii. Recommendation**

A clear, succinct statement of actions to be taken. More lengthy/detailed actions can be detailed within the item and incorporated by reference.

**iv. Summary Statement/Current Situation and its effects**

A short resume of the circumstances that give rise to the need for the recommended actions.

**v. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

**vi. Review of Existing Plans, Programs, Policies and Laws**

Review, identification, and discussion of relevant/applicable City of Berkeley, State, and other relevant Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from, or run contrary to them.

**vii. Actions/Alternatives Considered**

A listing of solutions/measures that other jurisdictions, advocates, experts, or organizations have studied or adopted to address the same or similar subject matter, the range of actions considered, and the reasons why those solutions/measures are proposed to be adopted, modified, or rejected.

**viii. Consultation/Outreach Overview and Results**

Review/listing of external and internal City of Berkeley stakeholders that were consulted and reports, articles, books, websites and other materials that were consulted and discussion of approaches that were accepted, modified, or rejected.

**ix. Rationale for Recommendation**

A clear and concise statement as to whether the item proposes actions that (a) conform to, clarify or extend, (b) make major or minor changes/amendments, (c) create an exception, or (d) reverse/go contrary to existing City of Berkeley Plans, Programs, Policies and Laws, or (e) create largely or entirely new Plans, Programs, Policies or Laws.

**x. Implementation, Administration and Enforcement**

A discussion of how the recommended action would be implemented, administered and enforced by the City of Berkeley.

**xi. Environmental Sustainability and Climate Impacts**

A discussion of the impacts of recommended actions, if any, on the environment and the recommendation's relationship to the City's Climate Action, Resilience, and other sustainability goals.

**xii. Fiscal Impacts**

A review of the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as expected or potential direct and indirect costs.

**xiii. Outcomes and Evaluation**

A statement of the specific outcomes expected and what reporting and/or evaluation is recommended to ensure the outcomes are being achieved.

**xiv. Contact Information**

**xv. Attachments/Supporting Materials**

## D. Procedure for Bringing Matters Before City Council

**1. Persons Who Can Place Matters on the Agenda.**

Matters may be placed on the Agenda by the Mayor or any Councilmember, the Auditor, Charter Officers, or any board/commission/committee created by the City Council, ballot measure, or the City Charter. All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules

and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council.

The Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the Agenda of that City Council meeting. Pursuant to BMC Section 1.04.080, if the 15th day prior to the Council meeting falls on a holiday, the Committee will meet the next business day. The Agenda & Rules Committee Packet, including a draft Agenda and reports from the Mayor and Councilmembers, the Auditor, and Commission shall be distributed by 5:00 p.m. four days before the Agenda & Rules Committee meeting.

The Agenda & Rules Committee shall have the powers set forth below.

**a) Regular Items Authored by the Mayor or a Councilmember.**
As to Regular Items authored by the Mayor or a Councilmember, the Agenda & Rules Committee shall review the item and may take the following actions:

i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).

ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).

iii. Refer the item back to the Primary Author for requested amendments, adherence to required form, or for additional analysis, as required in Section III.C.1 (Primary Author may decline and request Policy Committee assignment).

iv. Refer the item to a Policy Committee.

v. Schedule the item for the Agenda under consideration or one of the next three regular Council Agendas.

**b) Major Items.**
The Agenda & Rules Committee retains the authority to designate which Agenda Items are classified as Major Items. With regards to Major Items, the Agenda & Rules Committee shall review the item and may take the following actions:

i. Return the item to the Author if the committee determines that the item is not substantially compliant with Chapter III.C.2 and the guidelines in Appendix B.

ii. Refer the item to a policy committee and send a notice to the Budget & Finance Committee if the item contains a budget referral.

iii. Schedule the item for the Council Agenda under consideration.

iv. Schedule the item for one of the susequent three Council Agendas or a special meeting.

v. Refer the item to a commission with the consent of the Primary Author.

**c)** For referrals of Regular Items under Chapter III.D.1.a.i, ii, or iii, the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or

2) withdraw the item completely; or

3) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council Agenda under consideration; or

4) accept the referral of the Agenda & Rules Committee in sub paragraphs III.D.1.a. i, ii, or iii, or request Policy Committee assignment.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft Agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft Agenda for consideration by the Agenda & Rules Committee.

Items being resubmitted for a future meeting to allow for modifications will be placed on the next available Council meeting Agenda at the time that the revised version is submitted to the City Clerk.

**d) Items Authored by Charter Officers and the Auditor.**
The Agenda & Rules Committee shall review agenda descriptions of items authored by Charter Officers and the Auditor. The Committee can recommend that the matter be referred to a commission, to a Policy Committee, or back to the Charter Officer or the Auditor for adherence to required form, additional analysis as required in Section III.C.1, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the Charter Officer or the Auditor determines that their item should proceed notwithstanding the Agenda & Rules Committee's recommendation, it will be placed on the Agenda as directed by the Charter Officer or the Auditor. All Charter Officer and Auditor items placed on the Council Agenda against the recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

**e) Items Authored by Boards and Commissions.**
Agenda Items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda & Rules Committee unless referred for policy review to the Agenda & Rules Committee.

i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendized commission item in the following manner:

1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.

2. Re-schedule the commission report to appear on one of the next three regular Council meeting Agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.

3. Refer the item to a Policy Committee for review.

4. Allow the item to proceed as submitted.

ii) For any commission report that requires a City Manager companion report, the Agenda & Rules Committee may schedule the item on a Council Agenda. The Committee must schedule the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph e.i. above.

**f)** The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section F.

**2. Removal of Agenda Items from the Legislative Process**
A Primary Author may withdraw their Agenda Item from the legislative process as follows: 1) during the time it is pending at a policy committee by sending written notification to the City Clerk or verbally at the meeting; 2) verbally at the Agenda & Rules Committee meeting when the item appears on a draft Council Agenda; or 3) verbally at the City Council meeting when the item appears on the Council Agenda or in writing through the supplemental process.

3. **Scheduling Public Hearings Mandated by State, Federal, or Local Statute.** The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

4. **Submission of Agenda Items.**
   a) **Charter Officer Items.** Except for Continued Business and Old Business, as a condition to placing an item on the Agenda, Agenda Items from departments, including Agenda Items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

   b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and Councilmembers is 5:00 p.m. on Monday, 22 days before each regular Council meeting.

   c) **Time Critical Items.** A Time Critical item is defined as a matter that is considered urgent by the Author and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by a Charter Officer, the Auditor, Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published Agenda.

      The Primary Author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

   d) **Timelines.** The City Clerk may not accept any Agenda Item after the adjournment of the Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring 11 or fewer days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

5. **Submission of Supplemental and Revised Agenda Material.** Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an Agenda Item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

   a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council

meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for public review or City Councilmember evaluation.

b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for public review or City Council evaluation.

c) After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 40 copies of the supplemental/revised material to the City Clerk for distribution at the meeting and submitting the material electronically to the City Clerk. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for public review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the Agenda Item in order for the material to be considered.

**6. Submission of Late Urgency Items Pursuant to Government Code Section 54954.2(b)**

Late Urgency Items are items proposed for submission to the Council Agenda pursuant to Government Code Section 54954.2(b)

All items to be submitted for consideration for addition to an Agenda as Late Urgency Items shall be accompanied by a cover sheet that includes 1) boxes to check for the Author to affirm whether the item is submitted under the Emergency or Immediate Action Rule (and a short explanation of what is required to meet each rule, as well as the vote threshold required for the item to be placed onto the Agenda by the City Council); 2) a disclaimer in BOLD 14pt. CAPS stating that the item is not yet agendized and may or may not be accepted for the Agenda as a

Late Urgency Item, at the City Council's discretion according to Brown Act rules; 3) a prompt requiring the Author to list the facts which support consideration of the item for addition to the Agenda as either an Emergency or Immediate Action item; and 4) a copy of the City Attorney memo on Late Urgency Items.

Late Items must be submitted to the City Clerk no later than 12:00 p.m. (noon) the day prior to the meeting.

All complete Late Items submitted by the deadline will be distributed with Supplemental Communication Packet #2 by 5:00 p.m. the day before the Council meeting. A Late Item is not considered "complete" and will not be distributed unless submitted with the required cover sheet, filled out in a complete manner.

Very Late Urgency Items of an extremely urgent nature (e.g., earthquake, severe wildfire, pandemic) may be submitted for addition to the Agenda after the deadline of 12:00 p.m. the day before the meeting to accommodate unforeseeable, extreme and unusual circumstances. A Very Late Urgency Item will be distributed at the Council meeting prior to any vote to add it to the Agenda and the Presiding Officer may provide an appropriate break to allow Councilmembers and the public to review the item before voting on whether to add it to the Agenda and possibly again, at the Presiding Officer's discretion, before the item is voted on.

The required cover sheet should be included with the Very Late Urgency Item unless extremely exigent circumstances underlie the Very Late Urgency Item submission and a written cover sheet could not be prepared (for example, power is out and printing or emailing is not possible), in which case the individual "walking in" the item should be ready to provide all required information verbally at the meeting before a vote is taken to add or not add the item to the Agenda.

**7. Scheduling a Presentation.**
Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.

## E. Packet Preparation and Posting

1. **Preparation of the Packet.**
Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the Packet, which shall include the Agenda plus all its corresponding Agenda Items. No item shall be considered if not included in the Packet, except as provided for in Section III.D.5. and Section III.E.4.

2. **Distribution and Posting of Agenda.**
   a) The City Clerk shall post each Agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each Agenda of a special meeting at least 24 hours prior to the meeting on the official bulletin

board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each Agenda.

b) The City Clerk shall also post Agendas and annotated Agendas of all City Council meetings and notices of public hearings on the City's website.

c) No later than 11 days prior to a regular meeting, copies of the Agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

3. **Distribution of the Agenda Packet.**
The Agenda Packet shall consist of the Agenda and all supporting documents for Agenda Items. No later than 11 days prior to a regular meeting, the City Clerk shall:

a) distribute the Agenda Packet to each member of the City Council;

b) post the Agenda Packet to the City's website;

c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and

d) make the Agenda Packet available to members of the press.

4. **Failure to Meet Deadlines.**
a) The City Clerk shall not accept any Agenda Item or revised Agenda Item after the deadlines established.

b) Matters not included on the published Agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:

- A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.7.

- Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the Agenda as required by law.

c) Matters listed on the printed Agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the Agenda Packet, shall not be discussed or acted upon.

## F. Agenda Sequence and Order of Business

The Council Agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Land Acknowledgement Statement, Comments from the City Manager, Comments from the City Auditor [if requested], Non-Agenda Public Comment, Public Comment by Employee Unions)
    a) The Land Acknowledgement Statement and Public Comment from Employee Unions are regularly agendized only for the first regular meeting of each month.
2. Consent Calendar
3. Action Calendar
    a) Appeals
    b) Public Hearings
    c) Continued Business
    d) Old Business
    e) New Business
4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

Action items may be reordered at the discretion of the Chair.

The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

## G. Closed Session Documents

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.

2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.

3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

## H. Regulations Governing City Council Policy Committees

### 1. Legislative Item Process

All Agenda Items begin with submission to the Agenda & Rules Committee.

Exempt Items
Regular Items under this category submitted by the Mayor or Councilmembers are exempt from Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the Agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Exempt Items are listed below.

a. Position Letters and Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
b. Donations from the Mayor and Councilmember District Office Budgets
c. Referrals to the Budget Process that are not related to a Major Item
d. Proclamations
e. Sponsorship of Events
f. Information Reports
g. Presentations from Outside Agencies and Organizations
h. Ceremonial Items
i. Committee and Regional Body Appointments

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember is classified as an Exempt Item or if the item is subject to Policy Committee review

Major Items
Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council Agenda.

The Agenda & Rules Committee must take action on an item as prescribed in Chapter III.D. at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee, except that an item meeting the definition of a Major Item that also includes a budget referral may be referred to both the Budget & Finance Committee

in the form of a notice that a budget referral is under consideration at another Committee, and one other Policy Committee for subject matter review.

Time Critical Items

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

The Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

Time Critical items that would otherwise be assigned to a Policy Committee, may bypass Policy Committee review if determined to be time critical. If such an item is deemed not to be time critical, it may be referred to a Policy Committee.

Time Critical items that are submitted at a meeting of the Agenda & Rules Committee may go directly on a Council Agenda if determined to be time critical.

**2. Council Referrals to Policy Committees**

The full Council may refer any Agenda Item to a Policy Committee by majority vote.

**3. Participation Rules for Policy Committees Pursuant to the Brown Act**

a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.

b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.

c. Notwithstanding paragraph (b) above, two members of a Policy Committee may be listed as Authors or Co-Sponsors on an item provided that one of the Authors or Co-Sponsors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed alternate, who also cannot be an Author or Co-Sponsor, will serve as a committee member in place of the non-participating Author or Co-Sponsor.

d. All three members of a Policy Committee may not be Authors or Co-Sponsors of an item that will be heard by the committee.

e. Only one Author or Co-Sponsor who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.

f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an Author who is not a member of the committee

is present to participate in the discussion of their item, no other non-committee member Councilmembers, nor the Mayor, may attend as observers.

g. An item may be considered by only one Policy Committee before it goes to the full Council.

**4. Functions of the Policy Committees**

Committees shall have the following qualities/components:

a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting Agendas will be posted at least 72 hours in advance of the meeting.

b. Minutes shall be available online.

c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.

d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.

e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.

f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.

g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.

h. Committees will review items for completeness in accordance with Section III.C.1 and III.C.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.

i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.

j. Per Brown Act regulations, any revised or supplemental materials must be direct revisions or supplements to the item that was published in the Agenda Packet.

Items referred to a Policy Committee from the Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, either (1) the committee Chair may accept the Primary Author's request, either in writing, or in person at a meeting of the committee, that the item remain in committee until a date certain (more than one extension may be requested by the Primary Author); or (2) the committee may vote to send the item

to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below. The Committee Chair shall report any extension granted outside of a meeting to the Committee and the City Clerk by email or verbally at the next Committee meeting.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's recommendation will be included in a separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a City board or commission.

The Primary Author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate City staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and recommendations originating from the Policy Committee are submitted to the City Clerk by the members of the committee.

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda & Rules Committee and appears on the next available Council Agenda. The Agenda & Rules Committee may leave the item on the Agenda under consideration or place it on the next Council Agenda. Items appearing on a City Council Agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council Agenda for consideration.

Policy Committees may add discussion topics that are within their purview to their Agenda with the concurrence of a majority of the Committee. These items are not subject to the 120-day deadline for action.

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the Primary Author, and it will return to the Agenda & Rules Committee on the next available Agenda. The Agenda & Rules Committee may leave the item on the Agenda under consideration or place it on the following Council Agenda. The Agenda & Rules Committee may agendize the item on the Consent Calendar or Action Calendar.

The Primary Author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review.

**5. Number and Make-up of Policy Committees**

Six committees are authorized, each comprised of three Councilmembers, with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

**6. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## I. Agenda Items Authored by Former Mayors and Councilmembers

Upon the date that the elected official leaves office, all Agenda Items in the legislative process for which the former official is the Primary Author shall be placed on the next available draft Council Agenda to be reviewed by the Agenda & Rules Committee. The Agenda & Rules Committee shall then place the items on the Council Agenda under consideration or the next Council Agenda.

At the Council meeting where the items appear on the Agenda, the Mayor or any Councilmember may assume primary authorship of any item authored by the former official. The Council may then, by motion and vote, take any legislative action permitted under the Rules of Procedure.

If any of the items from the former official are not assumed by the Mayor or Councilmember, the Council may then, by motion and vote, take any legislative action permitted under the Rules of Procedure, except that the item may not be referred to a policy committee.

# IV. CONDUCT OF MEETING

## A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.

- At the first regular meeting of the month, a period of public comment 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.

- Public comment on the Consent and Information Calendars.

- Public comment on the Action Calendar at the onset of the Action calendar with the exception of appeals, public hearings, and quasi-judicial matters requiring public comment for due process purposes (if invoked by the Presiding Officer).

- Public comment on Action items by those who did not speak in the earlier Action Calendar public comment period, any appeals, public hearings, and/or other quasi-judicial matters requiring extended public comment for due process purposes as they are taken up under procedures set forth in the sections governing each below.

- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Except in the case of public comment by employee unions, speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

With respect to public comment by employee unions, each union's allocated time may be shared between more than one representative, and representatives and other members of unions may speak during other public comment periods in the same manner as members of the public.

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 on an item, the Presiding Officer may limit the public comment for all speakers on the item to one minute per speaker.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this chapter.

The Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council.

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry, or unless the individual is speaking with respect to a public hearing, a quasi-judicial matter, and/or any other item requiring extended public comment as a matter of due process.

1. **Public Comment on Non-Agenda Matters.**
   Immediately following Ceremonial Matters and the City Manager Comments and prior to reserved public comment by employee unions, 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. Speaker cards are not required for this second round of public comment on non-agenda matters.

   Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

   For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized or raise their hand on the videoconference application to determine the number of persons interested in speaking at that time. Each speaker will be

entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate.

If the meeting is automatically adjourned at 11:00 p.m., or the expiration of any extension after 11:00 p.m., the meeting shall be automatically extended for up to fifteen minutes to hear public comment on non-agenda items.

2. **Public Comment on Consent Calendar and Information Items.**
The Council will first determine whether to move items on the Agenda for "Action" or "Information" to the "Consent Calendar," or move "Consent Calendar" items to "Action." Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent."

   The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. No additional items can be moved onto the Consent Calendar once public comment has commenced.

   At any time during, or immediately after, public comment on Information and Consent items, the Mayor or any Councilmember may move any Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

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

3. **Public Comment on Action Items.**
After the initial ten minutes of public comment on non-agenda items, reserved public comment by employee unions, public comment on Consent and Information items, and adoption of the Consent Calendar, the public may comment on each remaining item listed on the Agenda for action as the item is taken up.

   At the discretion of the Presiding Officer, with the consent of the Council, there may be a public comment period for one or several of the Action Calendar items at the beginning of the Action Calendar. Speaking time during this comment period is subject to the standard rules for public comments in Chapter IV.A. Speakers may speak to multiple items, but may only speak once during this period. This provision is not applicable to public hearings, appeals, and/or quasi-judicial matters. Attendees that speak on an action item at the scheduled public comment period may not speak again when the action item is taken up by the Council.

   During the public comment period for each Action Item, the Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and raise their hand on the videoconference application to determine the number of persons interested in speaking on that item.

4. **Appeals Appearing on Action Calendar.**
With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of a proposed lien (nuisance abatement/special assessment) lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council Agenda.

5. **Ralph M. Brown Act Pertaining to Public Comments.**
The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the Agenda. However, the Council may refer a matter to the City Manager.

## B. Consent Calendar

There shall be a Consent Calendar on all regular meeting Agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor, and Charter Officers deem to be of such nature that no debate, prolonged discussion, or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of Consent Calendar items can be minimized.

## C. Information Reports Called Up for Discussion

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The Agenda will indicate that at the request of the Mayor or any Councilmember a Report for Information may be acted upon by the Council.

## D. Written Communications

Written communications from the public will not appear on the Council Agenda as individual matters for discussion but will be distributed as part of the Council Agenda Packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the Agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council Agenda to the Council to be reproduced in the "Communications" section of the Council Packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a Consent or Action item for placement on a future Agenda.

Communications related to an item on the Agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.D.5.

## E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, and prior to opening the public hearing, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by first the appellant and then the applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons

supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak line up at the podium to be recognized or raise their hand on the videoconference platform, to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

## F. Work Sessions

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent Agenda under the Action portion of the Council Agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak line up at the podium or raise their hand on the videoconference to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

## G. Protocol

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

# V. PROCEDURAL MATTERS

## A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

## B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

## C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the Presiding Officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

## D. Precedence of Motions

When a question or motion is before the Council, no motion shall be entertained except:

1. To adjourn;
2. To fix the hour of adjournment;
3. To lay on the table;
4. For the previous question;
5. To postpone to a certain day;
6. To refer;
7. To amend;
8. To substitute; and
9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.

## E. Robert's Rules of Order

Robert's Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

## F. Rules of Debate

1. **Presiding Officer May Debate.**
   The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

2. **Getting the Floor - Improper References to be avoided.**
   Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themself to the question under debate.

3. **Interruptions.**
   A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

4. **Privilege of Closing Debate.**
   The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

5. **Motion to Reconsider.**
   A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

6. **Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**
   Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

## G. Debate Limited

For the Consent Calendar, the Mayor and Councilmembers will initially have up to five minutes each to make comments. After all members of the Council have spoken (or passed) and after public comment, members will each have two additional minutes to discuss the Consent Calendar.

For non-Consent items, the Mayor and Councilmembers will have five minutes each to make initial comments on an Agenda Item. After every Councilmember has spoken or declined and after public comment, Councilmembers will each have another five minutes per person to address an item. Debate may be extended beyond a second round of Council comments by a majority vote (5 votes).

Time will toll during staff answers to questions; Councilmembers are urged to ask their questions of city staff before the meeting or in writing.

## H. Motion to Lay on Table

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

## I. Division of Question

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

## J. Addressing the Council

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

1. **Written Communications.**
   Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.D.5.

2. **Public Hearings.**
   Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

3. **Public Comment.**
   Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

## K. Addressing the Council After Motion Made

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

## L. Use of Cellular Phones and Electronic Devices

The use of cell phones during City Council meetings is discouraged for the Mayor and Councilmembers. While communications regarding Council items should be minimized, personal communications between family members and/or caregivers can be taken outside in the case of emergencies. In order to acknowledge differences in learning styles and support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on electronic devices such as laptop computers and tablets.

The use of cell phones during Closed Session Meetings is explicitly prohibited for the Mayor and Councilmembers.

# VI. FACILITIES

## A. Meeting Location Capacity

Attendance at Council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

## B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

## C. Amplified Sound, Signs, Objects, and Symbolic Materials

Amplified sound devices such as bullhorns, megaphones, portable sound systems, and similar devices are prohibited within the meeting location during Council meetings.

Objects and symbolic materials such as signs and banners are permitted in the meeting location provided that they do not interfere with the cameras that broadcast the meeting, obstruct the view of other attendees, or create a fire or safety hazard.

Any type of stick, pole, or similar object is prohibited in the meeting location during Council meetings.

## D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

## E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## F. Format of Meetings

The City Council may conduct regular meetings or special meetings held at the School District Boardroom in the hybrid format with both in-person and virtual participation as provided for in the Brown Act, and as noticed on the meeting Agenda. Council meetings at other locations may be conducted in the hybrid format if technologically feasible.

# APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

Purpose
To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

Objective
A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

Section 1 – Lead Commission
The City Council designates the following commissions as the 'Lead Commissions' in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

Board of Library Trustees

Parks, Recreation & Waterfront Commission – Parks, recreation centers, camps, plazas, public open spaces, and public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

Transportation and Infrastructure Commission – Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Section 2 – General Policy
A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.

B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.

C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.

D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.

E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.

B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.

C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.

D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.

E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.

F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.

B. The honoree has a record of outstanding service to their community.

C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

Section 5 –Procedures for Naming or Renaming of Public Facilities

A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
    1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.

B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
    1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.

C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
    1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination.

D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.
    1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.

E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

# APPENDIX B. GUIDELINES FOR CITY COUNCILMEMBER/MAYOR MAJOR ITEMS

Requirements for City Councilmember/Mayor Major Items are provided in Chapter III.C.2 of the City Council Rules of Procedure and Order. These guidelines further explain the requirements and are intended to assist in the preparation of fully researched and documented items that are likely to be eligible to move forward in the legislative process as determined by the Agenda & Rules Committee.

_____

1. **Title**
   A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

2. **Consent/Action/Information Calendar**
   Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

3. **Recommendation**
   Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

   Common action options include:
   - Adopt first reading of ordinance
   - Adopt a resolution
   - Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
   - Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
   - Referral to a Commission or to a Standing or Ad Hoc Council Committee
   - Referral to the budget process
   - Send letter of support
   - Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
   - Designate members of the Council to perform some action

4. **Summary Statement/ "Current situation and its effects"**
   A short resume of the circumstances that give rise to the need for the recommended action(s).
   - Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
   - Example (fictional):
     *Winter rains are lasting longer than expected. Berkeley's winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season,*

*hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley's winter shelters open until the end of April, and refers to the Budget Process $40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan
- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan
Review of similar legislation previously introduced/passed by Council
Review of County, State and Federal laws/policies/programs/plans, if applicable

7. **Actions/Alternatives Considered**
    - What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
    - What solutions/measures are recommended by **advocates, experts, organizations**?
    - What is the range of actions considered, and what are some of their major pros and cons?
    - Why were other solutions not as feasible/advisable?

8. **Consultation/Outreach Overview and Results**
    - Review/list external and internal stakeholders that were consulted
        - **External**: constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
        - **Internal**: staff who would implement policies, the City Manager and/or Deputy CM, Department Heads, City Attorney, City Clerk, etc.
    - What reports, articles, books, websites and other materials were consulted?
    - What was learned from these sources?
    - What changes or approaches did they advocate for that were accepted or rejected?

9. **Rationale for Recommendation**

    A clear and concise statement as to whether the item proposes actions that:
    - Conform to, clarify or extend existing Plans, Programs, Policies and Laws
    - Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
    - Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
    - Create an exception to existing Plans, Programs, Policies and Laws
    - Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

    Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented, but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

10. **Implementation, Administration and Enforcement**

    Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

11. **Environmental Sustainability and Climate Impacts**
    Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

12. **Fiscal Impacts**
    Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

13. **Outcomes and Evaluation**
    State the specific outcomes expected, if any (i.e., *"it is expected that 100 homeless people will be referred to housing every year"*) and what reporting or evaluation is recommended.

14. **Contact Information**

15. **Attachments/Supporting Materials**

Attachment 2

# The Berkeley City Council
# Rules of Procedure and Order

Adopted by Resolution No. ~~71,174~~##,### ~~–~~N.S.

Effective ~~January 22, 2024~~[Date]

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# I. DUTIES

## A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

## B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

## C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

## D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set a limit on the speaking time allotted to Councilmembers during Council discussion.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

## E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

**F. Requests for Technical Assistance and/or Reports**

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

# II. MEETINGS

**A. Call to Order - Presiding Officer**

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting Agenda and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair. In the absence of the two officers specified in this section, the Councilmember present with the longest period of Council service shall preside.

**B. Roll Call**

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

**C. Quorum Call**

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

**D. Council Meeting Conduct of Business**

The ~~agenda~~Agenda for the regular business meetings shall include the Order of Business described in Chapter III.F. ~~following: Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public.~~ Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) on Action will be heard. ~~with the consent of Council.~~

Three ~~(3)~~ or more members of the City Council must agree to pull an item from the Consent or Information Calendar for it to move to Action. Absent at least three members concurring, the item will stay on the Consent or Information Calendar.

~~and, w~~With respect to Consent items, the Mayor or Councilmembers will be allowed to record their aye, nay or abstain votes on individual items or the entire Consent Calendar prior to the vote on the Consent Calendar. However, if three or more Councilmembers object to a Consent item by expressing their intent to abstain or vote no, the item shall be moved from Consent to Action.

Moving an item from the Action Calendar to the Consent Calendar requires the unanimous consent of the entire City Council.

~~Upon request by the Mayor or any Councilmember, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by the Mayor or any Councilmember, the Council may also move an item from the Action Calendar to the Consent Calendar.~~

**Commented [NML1]:** Eliminates redundancy within the document. Chapter III.F. is more detailed.

**Commented [NML2]:** Per Council action on 5/7/24.

**Commented [NML3]:** Process moved here from Appendix C

**Commented [NML4]:** Per Council action on 5/7/24.

A public hearing that is not expected to be lengthy may be placed on the ~~agenda~~Agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the ~~agenda~~Agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

The Council will endeavor to inform meeting attendees of the approximate time for high interest items. In addition, the Council will make best efforts to determine if items should be carried over to future meetings earlier in the meeting rather than later.

**Commented [NML5]:** Per Council action on 5/7/24.

**E. Adjournment**

No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific Agenda Items to be covered and shall specify in which order these items shall be handled.

Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council ~~agenda~~Agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month except during recess periods; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

A recess period is defined as a period of time longer than 21 days without a regular meeting of the Council.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend up to the date of the Agenda & Rules Committee meeting for the first regular meeting after the Council recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

## H. Pledge of Allegiance to the Flag

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the Ceremonial Calendar will be the Pledge of Allegiance.

## I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from residents, related commissions, and other groups, as appropriate to the charge or responsibilities of such subcommittee. Ad hoc subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

~~Subcommittees shall conduct their meetings in locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items~~

**Commented [NML6]:** Ad hoc committees are not legislative bodies under the Brown Act. These requirements have been repealed for commissions and need to be repealed for the Council for consistency.

~~but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.~~

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

~~Ad hoc subcommittees may convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.~~

# III. AGENDA

## A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the ~~agenda~~Agenda of the meeting and posted in accordance with Section III.E~~D~~.2. Exceptions to this rule are limited to circumstances listed in Section III.E~~D~~.4.b and items continued from a previous meeting and published on a revised ~~agenda~~Agenda.

## B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the ~~agenda~~Agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, ~~the City Manager~~a Charter Officer, the Auditor, or any board/commission/committee created by the City Council or City Charter, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from ~~the City Manager~~a Charter Officer concerning any item to be acted upon by the Council shall be submitted as a report on the ~~agenda~~Agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney~~-~~-client communication concerning a litigation matter. Council A~~a~~genda I~~i~~tems are limited to a maximum of four Authors and Co-Sponsors, in any combination that includes at least one Author.

   Authors must be listed in the original item as submitted by the Primary Author. Co-Sponsors may only be added ~~in the following manner:~~ by the Primary Author (1) at the Agenda Committee meeting where the item is placed on a Council ~~agenda~~Agenda; or (2) after the item has been placed on a Council ~~agenda~~Agenda, through the Supplemental process, or (3) at the Council meeting where the item appears on the Agenda~~. for action.~~

   - ~~In the original item as submitted by the Primary Author~~
   - ~~In a revised item submitted by the Primary Author at the Agenda & Rules Committee~~
   - ~~By verbal request of the Primary Author at the Agenda & Rules Committee~~
   - ~~In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2~~
   - ~~By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full Council at which the item is considered~~

~~2. Agenda items shall contain all relevant documentation, including the information listed below:~~

   ~~a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;~~

**Commented [NML7]:** Per discussion at Agenda & Rules on 7/8/24; replaces text immediately below

**Commented [NML8]:** Moved to C. below

~~b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;~~

~~c) Recommendation of the report's Primary Author that describes the action to be taken on the item, if applicable;~~

~~d) Fiscal impacts of the recommendation;~~

~~e) A description of the current situation and its effects;~~

~~f) Background information as needed;~~

~~g) Rationale for recommendation;~~

~~h) Alternative actions considered;~~

~~i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items);~~

~~j) Person or persons to contact for further information, with telephone number;~~

~~k) Additional information and analysis as required. It is recommended that reports include the points of analysis in Appendix B - Guidelines for Developing and Writing Council Agenda Items.~~

2. "Author" means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.

3. "Primary Author" means the Mayor or Councilmember listed first on the item. The Primary Author is the sole contact for the City Manager with respect to the item. Communication with other Authors and Co-Sponsors, if any, is the responsibility of the Primary Author.

4. "Co-Sponsor" means the Mayor or other Councilmembers who wish to indicate their strong support for the item, but are not Authors, and are designated by the Primary Author to be ~~co-sponsor~~Co-Sponsors of the Ccouncil ~~agenda item~~Agenda Item.

5. "Agenda" means the compilation of the descriptive titles of Aagenda ~~i~~items submitted to the City Clerk, arranged in the sequence established in Section III.F~~E~~ hereof.

6. "Packet" means the ~~agenda~~Agenda plus all of its corresponding ~~agenda item~~Agenda Items.

7. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:

a) A work stoppage or other activity which severely impairs public health, safety, or both exists;

b) A crippling disaster, which severely impairs public health, safety or both exists.

b)c) Notice of the Council's proposed consideration of any such ~~emergency matter~~Emergency Matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

8. "Continued Business" means Items carried over from a prior ~~agenda~~Agenda of a meeting occurring ~~less than~~ 11 or fewer days earlier.

9. "Old Business" means Items carried over from a prior ~~agenda~~Agenda of a meeting occurring more than 11 days earlier.

10. "Charter Officer" means the City Manager, City Attorney, and the Director of Police Accountability.

11. "Major Item" means an Agenda Item with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts submitted by the Mayor or any Councilmember.

9.12. "Regular Item" means any Agenda Item not classified as a Major Item.

**C. Standards for Agenda ~~i~~Items**

1. ~~Agenda item~~Agenda Items, other than Major Items submitted by the Mayor or any Councilmember, shall contain all relevant documentation, including the information listed below:

i. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;

ii. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;

iii. Recommendation of the report's ~~Primary A~~author that describes the action to be taken on the item, if applicable;

iv. Fiscal impacts of the recommendation;

v. A description of the current situation and its effects;

vi. Background information as needed;

vii. Rationale for recommendation;

viii. Alternative actions considered;

**Commented [NML9]:** Per discussion at Agenda & Rules on 7/8/24

**Commented [NML10]:** Moved here from above

ix. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items);

x. Person or persons to contact for further information, with telephone number;

xi. Additional information and analysis as may be required.

xii. Environmental sustainability and climate impacts.

It is recommended that Regular Item reports also include, to the extend relevant, the points of analysis in Major Council Item Standards ~~at~~in Section C. ~~(~~2~~)~~.

2. Major Items submitted by the Mayor or any Councilmember shall contain all relevant documentation, including the information listed below and more fully described in Appendix B, Guidelines for City Councilmember/Mayor Major Items:

Commented [NML11]: Moved here from Appendix B

**i. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**ii. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**iii. Recommendation**

A c~~C~~lear, succinct statement of actions to be taken. More lengthy/detailed actions can be detailed within the item and incorporated by reference.

**iv. Summary Statement/Current Situation and its effects**

A short resume of the circumstances that give rise to the need for the recommended actions.

**v. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

**vi. Review of Existing Plans, Programs, Policies and Laws**

Review, identification, and discussion of relevant/applicable City of Berkeley, State, and other relevant Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from, or run contrary to them.

**vii. Actions/Alternatives Considered**

A listing of solutions/measures that other jurisdictions, ~~or~~ advocates, experts, or organizations have studied or adopted to address the same or similar subject

matter, the range of actions considered, and the reasons why those solutions/measures are proposed to be adopted, modified, or rejected.

**viii. Consultation/Outreach Overview and Results**

Review/listing of external and internal City of Berkeley stakeholders that were consulted and reports, articles, books, websites and other materials that were consulted and discussion of approaches that were accepted, modified, or rejected.

**ix. Rationale for Recommendation**

A clear and concise statement as to whether the item proposes actions that (a) conform to, clarify or extend, (b) make major or minor changes/amendments, (c) create an exception, or (d) reverse/go contrary to existing City of Berkeley Plans, Programs, Policies and Laws, or (e) create largely or entirely new Plans, Programs, Policies or Laws.

**x. Implementation, Administration and Enforcement**

A discussion of how the recommended action would be implemented, administered and enforced by the City of Berkeley.

**xi. Environmental Sustainability and Climate Impacts**

A discussion of the impacts of recommended actions, if any, on the environment and the recommendation's relationship to the City's Climate Action, Resilience, and other sustainability goals.

**xii. Fiscal Impacts**

A review of the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as expected or potential direct and indirect costs.

**xiii. Outcomes and Evaluation**

A statement of the specific outcomes expected and what reporting and/or evaluation is recommended to ensure the outcomes are being achieved.

**xiv. Contact Information**

**xv. Attachments/Supporting Materials**

**D. Procedure for Bringing Matters Before City Council**

1. **Persons Who Can Place Matters on the Agenda.**
   Matters may be placed on the ~~agenda~~Agenda by the Mayor or any Councilmember, ~~the City Manager,~~ the Auditor, Charter Officers, or any board/commission/committee created by the City Council, ballot measure, or the City Charter. All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council.

The Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the ~~agenda~~Agenda of that City Council meeting. Pursuant to BMC Section 1.04.080, if the 15th day prior to the Council meeting falls on a holiday, the Committee will meet the next business day. The Agenda & Rules Committee ~~packet~~Packet, including a draft ~~agenda~~Agenda and reports from the Mayor and Councilmembers, the Auditor, and Commission ~~reports~~ shall be distributed by 5:00 p.m. four days before the Agenda & Rules Committee meeting.

The Agenda & Rules Committee shall have the powers set forth below.

a) **Regular Items Authored by the Mayor, or a Councilmember~~, or the Auditor~~.**

Commented [NML12]: Auditor moved to paragraph (c) below with the consent of the Auditor

As to ~~item~~Regular Items authored by the Mayor~~,~~ or a Councilmember~~, or the Auditor~~, the Agenda & Rules Committee shall review the item and may take the following actions:

i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).

ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).

iii. Refer the item back to the Primary Author for requested amendments, adherence to required form, or for additional analysis, as required in Section III.C~~B~~.1~~2~~ (Primary Author may decline and request Policy Committee assignment).

iv. Refer the item to a Policy Committee.

v. Schedule the item for the ~~agenda~~Agenda under consideration or one of the next three ~~full~~regular Council ~~agenda~~Agendas.

**b) Major Items ~~Authored by the Mayor, a Councilmember, or the Auditor.~~**

The Agenda & Rules Committee retains the authority to designate which Agenda Items are classified as Major Items. With regards to Major Items, the Agenda & Rules Committee shall review the item and may take the following actions:

~~vi.~~i. Return the item to the Author if the committee determines that the item is not substantially compliant with Chapter III.C.2 and the guidelines in Appendix B.

ii. Refer the item to a policy committee and send a notice to the Budget & Finance Committee if the item contains a budget referral.

iii. Schedule the item for the Council Agenda under consideration.

iv. Schedule the item for one of the susequent three Council Agendas or a special meeting.

v. Refer the item to a commission with the consent of the Primary Author.

**Commented [NML13]:** Per discussion at Agenda & Rules on 7/8/24 to create a process for the new category of "Major Items"

**c)** For referrals of Regular Items under Chapter III.D~~C~~.1.a.i, ii, or iii, the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or

2) withdraw~~pull~~ the item completely; or

3) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council ~~agenda~~Agenda under consideration; or

4) accept the referral of the Agenda & Rules Committee in sub paragraphs III.~~C~~D.1.a. i, ii, or iii, or request Policy Committee assignment.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft ~~agenda~~Agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft ~~agenda~~Agenda for consideration by the Agenda & Rules Committee.

Items ~~held~~ being resubmitted for a future meeting to allow for modifications will be placed on the next available Council meeting ~~agenda~~Agenda at the time that the revised version is submitted to the City Clerk.

~~c)~~d) **Items Authored by ~~the City Manager~~Charter Officers and the Auditor.**

The Agenda & Rules Committee shall review agenda descriptions of items authored by ~~the City Manager~~Charter Officers and the Auditor. The Committee can recommend that the matter be referred to a commission, to a Policy Committee, or back to the ~~City Manager~~Charter Officer or the Auditor for adherence to required form, additional analysis as required in Section III.C.1~~B.2~~, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the ~~City Manager~~Charter Officer or the Auditor determines that their item ~~matter~~ should proceed notwithstanding the Agenda & Rules Committee's recommendation~~action~~, it will be placed on the ~~agenda~~Agenda as directed by the ~~Manager~~Charter Officer or the Auditor. All Charter Officer and Auditor ~~City Manager~~items placed on the Council ~~agenda~~Agenda against the recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

d)e) **Items Authored by Boards and Commissions.**

Agenda Items~~Council items~~ submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda & Rules Committee unless referred for policy review to the Agenda & Rules Committee.

i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendized commission item~~report~~ in the following manner:

1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.

2. Re-schedule the commission report to appear on one of the next three regular Council meeting ~~agenda~~Agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.

3. Refer the item to a Policy Committee for review.

4. Allow the item to proceed as submitted.

ii) For any commission report that requires a City Manager companion report, the Agenda & Rules Committee may schedule the item on a Council ~~agenda~~Agenda. The Committee must schedule the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph e~~c~~.i. above.

f) The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section F~~E~~.

**2. Removal of Agenda Items from the Legislative Process**

A Primary Author may withdraw their Agenda Item from the legislative process as follows: 1) during the time it is pending at a policy committee by sending written notification to the City Clerk or verbally at the meeting; 2) verbally at the Agenda & Rules Committee meeting when the item appears on a draft Council Agenda; or 3) verbally at the City Council meeting when the item appears on the Council Agenda or in writing through the supplemental process.

**Commented [NML14]:** Per discussion at Agenda & Rules on 7/8/24

~~2.~~3. **Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

3.4. **Submission of Agenda Items.**

a) **~~City Manager~~Charter Officer Items.** Except for Continued Business and Old Business, as a condition to placing an item on the ~~agenda~~Agenda, ~~agenda item~~Agenda Items from departments, including ~~agenda item~~Agenda Items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and ~~City~~ Councilmembers is 5:00 p.m. on Monday, 22 days before each regular Council meeting.

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

The Primary Author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

d) **Timelines.** The City Clerk may not accept any ~~agenda item~~Agenda Item after the adjournment of the Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring ~~less than~~ 11 or fewer days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

4.5. **Submission of Supplemental and Revised Agenda Material.**

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an ~~agenda item~~Agenda Item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for publiccitizen review or City Councilmember evaluation.

b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for publiccitizen review or City Council evaluation.

c) After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 4240 copies of the supplemental/revised material to the City Clerk for distribution at the meeting and submitting the material electronically to the City Clerk. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for publiccitizen review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda itemAgenda Item in order for the material to be considered.

Commented [NML15]: For web posting so that virtual attendees have access

**5.6. Submission of Late Urgency Items Pursuant to Government Code Section 54954.2(b)**

Late Urgency Items are items proposed for submission to the Council Agenda pursuant to Government Code Section 54954.2(b)

All items to be submitted for consideration for addition to an agendaAgenda as Late Urgency Items shall be accompanied by a cover sheet that includes 1) boxes to check for the Author to affirm whether the item is submitted under the Emergency or Immediate Action Rule (and a short explanation of what is required to meet each rule, as well as the vote threshold required for the item to be placed onto the agendaAgenda by the City

Council); 2) a disclaimer in BOLD 14pt. CAPS stating that the item is not yet agendized and may or may not be accepted for the ~~agenda~~Agenda as a Late Urgency Item, at the City Council's discretion according to Brown Act rules; 3) a prompt requiring the ~~author~~Author to list the facts which support consideration of the item for addition to the ~~agenda~~Agenda as either an Emergency or Immediate Action item; and 4) a copy of the City Attorney memo on Late Urgency Items.

Late Items must be submitted to the City Clerk no later than 12:00 p.m. (noon) the day prior to the meeting.

All complete Late Items submitted by the deadline will be distributed with Supplemental Communication Packet #2 by 5:00 p.m. the day before the Council meeting. A Late Item is not considered "complete" and will not be distributed unless submitted with the required cover sheet, filled out in a complete manner.

Very Late Urgency Items of an extremely urgent nature (e.g., earthquake, severe wildfire, pandemic) may be submitted for addition to the ~~agenda~~Agenda after the deadline of 12:00 p.m. the day before the meeting to accommodate unforeseeable, extreme and unusual circumstances. A Very Late Urgency Item will be distributed at the Council meeting prior to any vote to add it to the ~~agenda~~Agenda and the Presiding Officer may provide an appropriate break to allow Councilmembers and the public to review the item before voting on whether to add it to the ~~agenda~~Agenda and possibly again, at the Presiding Officer's discretion, before the item is voted on.

The required cover sheet should be included with the Very Late Urgency Item unless extremely exigent circumstances underlie the Very Late Urgency Item submission and a written cover sheet could not be prepared (for example, power is out and printing or emailing is not possible), in which case the individual "walking in" the item should be ready to provide all required information verbally at the meeting before a vote is taken to add or not add the item to the Agenda.

6.7. **Scheduling a Presentation.**
Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.

**E. Packet Preparation and Posting**

1. **Preparation of the Packet.**
Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the ~~packet~~Packet, which shall include the ~~agenda~~Agenda plus all its corresponding ~~agenda item~~Agenda Items. No item shall be considered if not included in the ~~packet~~Packet, except as provided for in Section III.D.5.~~C.~~4 and Section III.~~D~~E.4.

2. **Distribution and Posting of Agenda.**

a) The City Clerk shall post each ~~agenda~~Agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each ~~agenda~~Agenda of a special meeting at least 24 hours prior to~~in advance of~~ the meeting ~~in~~on the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each ~~agenda~~Agenda.

b) The City Clerk shall also post ~~agenda~~Agendas and annotated ~~agenda~~Agendas of all City Council meetings and notices of public hearings on the City's website.

c) No later than 11 days prior to a regular meeting, copies of the ~~agenda~~Agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

3. **Distribution of the Agenda Packet.**
The Agenda Packet shall consist of the Agenda and all supporting documents for ~~agenda item~~Agenda Items. No later than 11 days prior to a regular meeting, the City Clerk shall:

a) distribute the Agenda Packet to each member of the City Council;

b) post the Agenda Packet to the City's website;

c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and

d) make the Agenda Packet available to members of the press.

4. **Failure to Meet Deadlines.**
a) The City Clerk shall not accept any ~~agenda item~~Agenda Item or revised ~~agenda item~~Agenda Item after the deadlines established.

b) Matters not included on the published ~~agenda~~Agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:

- A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.7~~8~~.

- Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the ~~agenda~~Agenda as required by law.

c) Matters listed on the printed ~~agenda~~Agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the ~~agenda~~Agenda ~~packet~~Packet, shall not be discussed or acted upon.

**~~E.~~F. Agenda Sequence and Order of Business**

The Council ~~agenda~~Agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Land Acknowledgement Statement, Comments from the City Manager, Comments from the City Auditor [if requested], Non-Agenda Public Comment, Public Comment by Employee Unions)
    a) The Land Acknowledgement Statement and Public Comment from Employee Unions are regularly agendized only for the first regular meeting of each month.

~~1.~~2. Consent Calendar

~~2.~~3. Action Calendar
    a) Appeals
    b) Public Hearings
    c) Continued Business
    d) Old Business
    e) New Business

~~3.~~4. Information Reports

~~4.~~5. Non-Agenda Public Comment

~~5.~~6. Adjournment

~~6.~~7. Communications

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

The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

**Commented [NML16]:** Per discussionn at Agenda & Rules on 7/8/24 – for clarity.

**~~F.~~G. Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.

2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session

meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.

3. Removal of confidential materials from a binder is prohibited.

4. Duplication of the contents of a binder by any means is prohibited.

5. Confidential materials shall be retained in the binders for at least two years.

6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

## ~~G.~~H. Regulations Governing City Council Policy Committees

### 1. Legislative Item Process

All ~~agenda item~~Agenda Items begin with submission to the Agenda & Rules Committee.

~~Full Council~~Exempt Items ~~Track~~

Regular Items under this category submitted by the Mayor or Councilmembers are exempt from Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the ~~agenda~~Agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of ~~Full Council Track~~Exempt Iitems are listed below.

a. ~~Items submitted by the City Manager and City Auditor~~
b. ~~Items submitted by Boards and Commissions~~
c. Position Letters and Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
~~d. Position Letters and/or Resolutions of Support/Opposition~~
~~e.~~d. Donations from the Mayor and Councilmember District Office Budgets
~~f.~~e. Referrals to the Budget Process that are not related to a Major Item
~~g.~~f. Proclamations
~~h.~~g. Sponsorship of Events
~~i.~~h. Information Reports
~~j.~~i. Presentations from Outside Agencies and Organizations
~~k.~~j. Ceremonial Items
~~l.~~k. Committee and Regional Body Appointments

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember ~~falls under a Full Council~~ is classified as an Exempt Item ~~Track exception or if it will be processed as a Policy Committee~~ or if the item is subject to Policy Committee review ~~Track item.~~

~~Policy Committee Track~~ Major Items ~~Track~~

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council ~~agenda~~Agenda.

The Agenda & Rules Committee must ~~refer an~~take action on an item as prescribed in Chapter III.D. ~~to a Policy Committee~~ at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee, except that an item meeting the definition of a Major Item that also includes a budget referral may be referred to both the Budget & Finance Committee in the form of a notice that a budget referral is under

**Commented [NML17]:** Changes in this section are primarly related to the new definitaiton of Major Items and Regular Items as well as the amended process for the Agenda & Rules Committee in Chapter III.D.

**Commented [NML18]:** This is already covered in Chapter III.D.1.c.

**Commented [NML19]:** This is not covered in Chapter III.D.1.d.

**Commented [NML20]:** No change in process, just reworded with new terms

consideration at another Committee, and one other Policy Committee for subject matter review.

~~For a Major Item Policy Committee Track item, the Agenda & Rules Committee, at its discretion, may either route item directly to 1) the Council Aagenda currently under consideration, 2) one of the next subsequent three full Council Agendas for a Regular Meeting of the City Council (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a Policy Committee.~~

Commented [NML21]: These actions are now enshrined in Chapter III.D.1.b.

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

The Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

Time Critical items ~~submitted on the Full Council Track deadlines,~~ that would otherwise be assigned to a ~~the~~ Policy Committee ~~Track~~, may bypass Policy Committee review if determined to be time critical. If such an item is deemed not to be time critical, it may be referred to a Policy Committee.

Time Critical items ~~on the Full Council Track or Policy Committee Track~~ that are submitted at a meeting of the Agenda & Rules Committee may go directly on a C~~c~~ouncil ~~agenda~~Agenda if determined to be time critical.

**2. Council Referrals to Policy Committees**
The full Council may refer any ~~agenda item~~Agenda Item to a Policy Committee by majority vote.

**3. Participation Rules for Policy Committees Pursuant to the Brown Act**

a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.

b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.

c. Notwithstanding paragraph (b) above, two members of a Policy Committee may be listed as Authors or Co-Sponsors on an item provided that one of the Authors or Co-Sponsors will not serve as a committee member for consideration of the item, and shall not participate in the committee's

discussion of, or action on the item. For purposes of the item, the appointed alternate, who also cannot be an Author or Co-Sponsor, will serve as a committee member in place of the non-participating Author or Co-Sponsor.

d. All three members of a Policy Committee may not be Authors or Co-Sponsors of an item that will be heard by the committee.

e. Only one Author or Co-Sponsor who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.

f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an Author who is not a member of the committee is present to participate in the discussion of their item, no other non-committee member Councilmembers, nor the Mayor, may attend as observers.

g. An item may be considered by only one Policy Committee before it goes to the full Council.

**4. Functions of the Policy Committees**

Committees shall have the following qualities/components:

a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting ~~agenda~~Agendas will be posted at least 72 hours in advance of the meeting.
b. Minutes shall be available online.
c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.

h. Committees will review items for completeness in accordance with Section III.C.1 and III.C.2~~B.2~~ of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
j. Per Brown Act regulations, any revised or supplemental materials must be direct revisions or supplements to the item that was published in the ~~agenda~~Agenda ~~packet~~Packet.

Items referred to a Policy Committee from the Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, either (1) the committee Chair may accept the Primary Author's request, either in writing, or in person at a meeting of the committee, that the item remain in committee until a date certain (more than one extension may be requested by the Primary Author); or (2) the committee may vote to send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below. The Committee Chair shall report any extension granted outside of a meeting to the Committee and the City Clerk by email or verbally at the next Committee meeting.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's recommendation will be included in a separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a C~~c~~ity board or commission.

The Primary Author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate C~~c~~ity staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and recommendations originating from the Policy Committee are submitted to the City Clerk by the members of the committee.

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda & Rules Committee and appears on the next available Council ~~agenda~~Agenda. The Agenda & Rules Committee may leave the item on the ~~agenda~~Agenda under consideration or place it on the next Council ~~agenda~~Agenda. Items appearing on a City Council ~~agenda~~Agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council ~~agenda~~Agenda for consideration.

Policy Committees may add discussion topics that are within their purview to their ~~agenda~~Agenda with the concurrence of a majority of the Committee. These items are not subject to the 120-day deadline for action.

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the Primary Author, and it will return to the Agenda & Rules Committee on the next available ~~agenda~~Agenda. The Agenda & Rules Committee may leave the item on the ~~agenda~~Agenda under consideration or place it on the following Council ~~agenda~~Agenda. The Agenda & Rules Committee may agendize the item on the Consent Calendar or Action Calendar.~~Only items that receive a Positive Recommendation can be placed on the Consent Calendar.~~

**Commented [NML22]:** Per discussion at Agenda & Rules on 7/8/24 to allow for more discretion to place items returning from committee on Consent

The Primary Author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review.

**5. Number and Make-up of Policy Committees**

Six committees are authorized, each comprised of three Councilmembers, with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered "legislative bodies" under the Brown Act and must conduct all business in accordance with the Brown Act.

**6. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

**I. Agenda Items Authored by Former Mayors and Councilmembers**

Upon the date that the elected official leaves office, all Agenda Items in the legislative process for which the former official is the Primary Author shall be placed on the next available draft Council Agenda to be reviewed by the Agenda & Rules Committee. The Agenda & Rules Committee shall then place the items on the Council Agenda under consideration or the next Council Agenda.

At the Council meeting where the items appear on the Agenda, the Mayor or any Councilmember may assume primary authorship of any item authored by the former official. The Council may then, by motion and vote, take any legislative action permitted under the Rules of Procedure.

If any of the items from the former official are not assumed by the Mayor or any Councilmember, the Council may then, by motion and vote, take any legislative action permitted under the Rules of Procedure, except that the item may not be referred to a policy committee.

**Commented [NML23]:** New policy based on discussion at Agenda & Rules on 7/8/24

**Commented [NML24]:** From discussion at Agenda & Rules on 8/26/24

# IV. CONDUCT OF MEETING

## A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- At the first regular meeting of the month, a period of public comment 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.
- Public comment on the Consent and Information Calendars.
- Public comment on the Action Calendar at the onset of the Action calendar with the exception of appeals, public hearings, and quasi-judicial matters requiring public comment for due process purposes (if invoked by the Presiding Officer).
- Public comment on Aaction items by those who did not speak in the earlier Action Calendar public comment period, any appeals, public hearings, and/or other quasi-judicial matters requiring extended public comment for due process purposes as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Except in the case of public comment by employee unions, speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

With respect to public comment by employee unions, each union's allocated time may be shared between more than one representative, and representatives and other members of unions may speak during other public comment periods in the same manner as members of the public.

If ten or fewer persons are interested in speaking on an individual Actionagenda Iitem, each speaker may speak for two minutes. If there are more than ten persons interested in speaking on an item, the Presiding Officer may limit the public comment for all speakers on the item 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.

**Commented [NML25]:** Moved here as these rules are intended to cover all types of public comments

**Commented [NML26]:** Stated above, no need to repeat.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this chapter.~~section, below.~~

The Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council.

Commented [NML27]: From Appendix C

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

Commented [NML28]: From Appendix C

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry, or unless the individual is speaking with respect to a public hearing, a quasi-judicial matter, and/or any other item requiring extended public comment as a matter of due process.

**1. Public Comment on Non-Agenda Matters.**

Commented [NML29]: This section moved here to mirror the order of business on the agenda

Immediately following Ceremonial Matters and the City Manager Comments and prior to reserved public comment by employee unions, up to ten persons will be selected ~~by lottery~~ to address matters not on the Council A~~a~~genda. If five or fewer persons ~~submit speaker cards for the lottery~~are identified to provide non-agenda comment, each person selected will be allotted two minutes each. If more than five persons ~~submit speaker cards for the lottery, up to ten persons will be~~are selected to address matters not on the Council ~~agenda~~Agenda, ~~and~~ each person selected will be allotted one minute each.

In-person attendees~~Persons~~ wishing to address the Council on matters not on the Council ~~agenda~~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.~~commencement of that meeting.~~ 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.

Commented [NML30]: Revised to account for hybrid meetings.

Commented [NML31]: Per discussion at Agenda & Rules on 7/8/24 to facilitate public participation

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the ~~agenda~~Agenda. Speaker cards are not required for this second round of public comment on non-agenda matters. Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers. ~~by subject~~. The Presiding Officer will generally request that persons wishing to speak, line up at

Commented [NML32]: Per discussion at Agenda & Rules on 7/8/24 – not current or even recent practice

the podium to be recognized or raise their hand on the videoconference application to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate. ~~given the number of speakers.~~

~~Pursuant~~ ~~to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agendized business remains unfinished at 11:00 p.m.~~ If the meeting is automatically adjourned at 11:00 p.m., or the expiration of any extension after 11:00 p.m., ~~it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event,~~ the meeting shall be automatically extended for up to fifteen ~~(15)~~ minutes ~~for~~to hear public comment on non-agenda items.

**Commented [NML33]:** Per discussion at Agenda & Rules on 7/8/24

**Commented [NML34]:** Language is simplified and removed repition from other sections.

2. **Public Comment on Consent Calendar and Information Items.**
The Council will first determine whether to move items on the ~~agenda~~Agenda for "Action" or "Information" to the "Consent Calendar," or move "Consent Calendar" items to "Action." Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent."

   The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. No additional items can be moved onto the Consent Calendar once public comment has commenced.

   At any time during, or immediately after, public comment on Information and Consent items, the Mayor or any Councilmember may move any Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

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

**3. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items, reserved public comment by employee unions, public comment on Cconsent and iInformation items, and adoption of the Consent Calendar, the public may comment on each remaining item listed on the Agenda for action as the item is taken up.

At the discretion of the Presiding Officer, with the consent of the Council, there may be a public comment period for one or several of the Action Calendar items at the beginning of the Action Calendar. Speaking time during this comment period is subject to the standard rules for public comments in Chapter IV.A. Speakers may speak to multiple items, but may only speak once during this period. This provision is not applicable to ~~the public may comment on each remaining item listed on the agenda for action. Public comment will occur for each Action item—excluding~~ public hearings, appeals, and/or quasi-judicial matters. Attendees that speak on an action item at the scheduled public comment period may not speak again when the action item is taken up by the Council.~~—in separate but consecutive public comment periods before the Action Calendar is discussed by Council and staff and as the item is taken up. The Presiding Officer will open and close the public comment period for each Action Item, and each period will occur based on the order of the items on the agenda, or based on the discretion of the Presiding Officer.~~

**Commented [NML35]:** Per discussion at Agenda & Rules Committee this is a re-working of the previous language adopted by Council in 2023.

During the public comment period for each Action Item, the Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and raise their hand on the videoconference application to determine the number of persons interested in speaking onat that item.~~time.~~

~~If ten or fewer persons are interested in speaking on an individual Action Item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking on an item, the Presiding Officer may limit the public comment for all speakers on the item to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.~~

~~This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.~~

4. **Appeals Appearing on Action Calendar.**
With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of a proposed lien (nuisance abatement/special assessment) lien, the appellant shall have seven minutes to comment.

Commented [NML36]: Clarification based on BMC language

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council ~~agenda~~Agenda.

~~5. **Public Comment on Non-Agenda Matters.**~~
~~Immediately following Ceremonial Matters and the City Manager Comments and prior to reserved public comment by employee unions, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.~~

Commented [NML37]: Moved above

~~The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.~~

~~Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.~~

~~For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.~~

~~Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agendized business remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.~~

6. **Ralph M. Brown Act Pertaining to Public Comments.**
   The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the ~~agenda~~Agenda. However, the Council may refer a matter to the City Manager.

## B. Consent Calendar

There shall be a Consent Calendar on all regular meeting ~~agenda~~Agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor, and Charter Officers~~City Manager~~ deem to be of such nature that no debate, prolonged discussion, or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of ~~c~~Consent ~~c~~Calendar items can be minimized.

~~Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.~~

**Commented [NML38]:** Moved to Chapter II.D.

## C. Information Reports Called Up for Discussion

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The ~~agenda~~Agenda will indicate that at the request of the Mayor or any Councilmember a Report for Information may be acted upon by the Council.

**D. Written Communications**

Written communications from the public will not appear on the Council ~~agenda~~Agenda as individual matters for discussion but will be distributed as part of the Council ~~agenda~~Agenda ~~packet~~Packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the ~~agenda~~Agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council ~~agenda~~Agenda to the Council to be reproduced in the "Communications" section of the Council ~~packet~~Packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a ~~c~~Consent or ~~a~~Action item for placement on a future ~~agenda~~Agenda.

Communications related to an item on the ~~agenda~~Agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.DC.54.

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, and prior to opening the public hearing, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by first the appellant and then the applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a

**Commented [NML39]:** Codifies long-standing practice

public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak~~,~~ line up at the podium to be recognized or raise their hand on the videoconference platform,~~and~~ to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

**F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent ~~agenda~~Agenda under the Action portion of the Council ~~agenda~~Agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak~~,~~ line up at the podium or raise their hand on the videoconference to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**G. Protocol**

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

# V. PROCEDURAL MATTERS

**A. Persons Authorized to Sit at Tables**

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

**B. Decorum**

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

**C. Enforcement of Decorum**

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the Ppresiding Oofficer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

**D. Precedence of Motions**

When a question or motion is before the Council, no motion shall be entertained except:

1. To adjourn;
2. To fix the hour of adjournment;
3. To lay on the table;
4. For the previous question;
5. To postpone to a certain day;
6. To refer;
7. To amend;
8. To substitute; and
9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.

**E. Robert's Rules of Order**

Robert's Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

**F. Rules of Debate**

1. **Presiding Officer May Debate.**
   The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

2. **Getting the Floor - Improper References to be avoided.**
   Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themself to the question under debate.

3. **Interruptions.**
   A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

4. **Privilege of Closing Debate.**
   The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

5. **Motion to Reconsider.**
   A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

6. **Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**
   Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

For the Consent Calendar, the Mayor and Councilmembers will initially have up to five minutes each to make comments. After all members of the Council have spoken (or passed) and after public comment, members will each have two additional minutes to discuss the Consent Calendar.

For non-Consent items, the Mayor and Councilmembers will have five~~two~~ minutes each to make initial comments on an ~~agenda item~~Agenda Item., ~~except for the author of an agenda item who will have five minutes to initially present the item.~~ After every Councilmember has spoken or declined and after public comment, Councilmembers will each have another five minutes per person to address an item. Debate may be extended beyond a second round of Council comments by a majority vote (5 votes).

Time will toll during staff answers to questions; Councilmembers are urged to ask their questions of city staff before the meeting or in writing.

~~1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:~~

~~a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or~~

~~b) If there are one or more motions on the floor, a motion for the previous question, which, if passed by a 2/3 vote, shall require an immediate vote on pending motions.~~

~~2. The time limit set forth in subparagraph 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.~~

~~3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.~~

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may

**Commented [NML40]:** Per Council direction on 5/7/24

**Commented [NML41]:** Per discussion at Agenda & Rules on 7/8/24 – eliminates redundancy in this paragraph.

**Commented [NML42]:** This obsolete "20-minute rule" language is replaced with the language immediately above from Appendix C

be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

1. **Written Communications.**
   Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.D.5.~~C.4.~~

2. **Public Hearings.**
   Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

3. **Public Comment.**
   Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

**L. Use of Cellular Phones and Electronic Devices**

The use of cell phones during City Council meetings is discouraged for the Mayor and Councilmembers. While communications regarding Council items should be minimized, personal communications between family members and/or caregivers can be taken outside in the case of emergencies. In order to acknowledge differences in learning styles and support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on electronic devices such as laptop computers and tablets.

The use of cell phones during Closed Session Meetings is explicitly prohibited for the Mayor and Councilmembers.

# VI. FACILITIES

**A. Meeting Location Capacity**

Attendance at Ccouncil meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

**B. Alternate Facilities for Council Meetings**

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

**C. Amplified Sound, Signs, Objects, and Symbolic Materials**

Amplified sound devices such as bullhorns, megaphones, portable sound systems, and similar devices are prohibited within the meeting location during Council meetings.

Objects and symbolic materials such as signs and banners are permitted in the meeting location provided that they do not interfere with the cameras that broadcast the meeting, obstruct the view of other attendees, or create a fire or safety hazard.

Any type of stick, pole, or similar object is prohibited in the meeting location during Council meetings.

**D. Fire Safety**

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

**E. Overcrowding**

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## F. Format of Meetings

Commented [NML43]: Per Council direction on 5/7/24

The City Council may conduct regular meetings or special meetings held at the School District Boardroom in the hybrid format with both in-person and virtual participation as provided for in the Brown Act, and as noticed on the meeting Agenda. Council meetings at other locations may be conducted in the hybrid format if technologically feasible.

# APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

Purpose
To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

Objective
A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

Section 1 – Lead Commission
The City Council designates the following commissions as the 'Lead Commissions' in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

Board of Library Trustees

Parks, ~~and~~ Recreation & Waterfront Commission – Parks, recreation centers, camps, plazas, ~~and~~ public open spaces, and public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

Transportation and Infrastructure ~~Public Works~~ Commission – Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

~~Waterfront Commission – Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.~~

**Commented [NML44]:** Moved above due to commission consolidation

Section 2 – General Policy
A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

Section 3 – Criteria for Naming of Public Facilities
When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an

established park), or, the renaming of an existing public facility the following criteria shall be applied:

A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
B. The honoree has a record of outstanding service to their community
C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

Section 5 –Procedures for Naming or Renaming of Public Facilities

A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
    1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
    1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
    1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination

D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.
    1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

# APPENDIX B. GUIDELINES FOR ~~DEVELOPING AND WRITING~~ CITY COUNCIL~~MEMBER~~/~~MAYOR MAJOR AGENDA~~ ITEMS

~~These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the Primary Author of an item provide "additional analysis" if the item as submitted evidences a "significant lack of background or supporting information" or "significant grammatical or readability issues."~~

~~These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt Authors to consider presenting items with as much relevant information and analysis as possible.~~

~~Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:~~

~~2. Agenda items shall contain all relevant documentation, including the following as Applicable:~~

~~a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;~~
~~b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;~~
~~c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);~~
~~d. Fiscal impacts of the recommendation;~~
~~e. A description of the current situation and its effects;~~
~~f. Background information as needed;~~
~~g. Rationale for recommendation;~~
~~h. Alternative actions considered;~~
~~i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);~~
~~j. Person or persons to contact for further information, with telephone number. If the Primary Author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.~~

**Commented [NML45]:** Eliminated here – redundant with text in the body of the ROP

~~Guidelines for City Council Items:~~ Requirements for City Council~~member~~/Mayor Major Items are provided in ~~Section [XXX]~~Chapter III.C.2 of the City Council Rules of Procedure and Order. These guidelines further explain the requirements and are intended to assist in the preparation of fully researched and documented items that are likely to be eligible to move forward in the legislative process as determined ~~deemed complete~~ by the Agenda ~~and~~& Rules Committee~~. in [process].~~

~~1. Title~~
~~2. Consent/Action/Information Calendar~~
~~3. Recommendation~~
~~4. Summary Statement/Current situation and its effects~~
~~5. Background~~
~~6. Review of Existing Plans, Programs, Policies and Laws~~
~~7. Actions/Alternatives Considered~~
~~8. Consultation/Outreach Overview and Results~~
~~9. Rationale for Recommendation~~
~~10. Implementation, Administration and Enforcement~~
~~11. Environmental Sustainability~~
~~12. Fiscal Impacts~~
~~13. Outcomes and Evaluation~~
~~14. Contact Information~~
~~15. Attachments/Supporting Materials~~

---

1. **Title**
   A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

2. **Consent/Action/Information Calendar**
   Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

3. **Recommendation**
   Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

   Common action options include:
   - Adopt first reading of ordinance
   - Adopt a resolution
   - Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
   - Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
   - Referral to a Commission or to a Standing or Ad Hoc Council Committee
   - Referral to the budget process

- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

4. **Summary Statement/ "Current situation and its effects"**
   A short resume of the circumstances that give rise to the need for the recommended action(s).
   - Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
   - Example (fictional):
     *Winter rains are lasting longer than expected. Berkeley's winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley's winter shelters open until the end of April, and refers to the Budget Process $40,000 to cover costs of an additional two months of shelter operations.*

5. **Background**
   A full discussion of the history, circumstances and concerns to be addressed by the item.
   - For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

6. **Review of Existing Plans, Programs, Policies and Laws**
   Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

   Review of all pertinent/applicable sections of:
   - The City Charter
   - Berkeley Municipal Code
   - Administrative Regulations
   - Council Resolutions
   - Staff training manuals

   Review of all applicable City Plans:
   - The General Plan

- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan
- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan
Review of similar legislation previously introduced/passed by Council
Review of County, State and Federal laws/policies/programs/plans, if applicable

7. **Actions/Alternatives Considered**
   - What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
   - What solutions/measures are recommended by **advocates, experts, organizations**?
   - What is the range of actions considered, and what are some of their major pros and cons?
   - Why were other solutions not as feasible/advisable?

8. **Consultation/Outreach Overview and Results**
   - Review/list external and internal stakeholders that were consulted
     - **External**: constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
     - **Internal**: staff who would implement policies, the City Manager and/or ~~d~~Deputy CM, Department Heads, City Attorney, City Clerk, etc.
   - What reports, articles, books, websites and other materials were consulted?
   - What was learned from these sources?
   - What changes or approaches did they advocate for that were accepted or rejected?

9. **Rationale for Recommendation**

A clear and concise statement as to whether the item proposes actions that:
- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws

- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented, but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

10. **Implementation, Administration and Enforcement**
    Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

11. **Environmental Sustainability and Climate Impacts**
    Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

12. **Fiscal Impacts**
    Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

13. **Outcomes and Evaluation**
    State the specific outcomes expected, if any (i.e., *"it is expected that 100 homeless people will be referred to housing every year"*) and what reporting or evaluation is recommended.

14. **Contact Information**

15. **Attachments/Supporting Materials**

## APPENDIX C. TEMPORARY RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS THROUGH VIDEO CONFERENCE DURING THE COVID-19 EMERGENCY

Commented [NML46]: Relevant portions have been moved to the body of the document.

**Mayor and Councilmember Speaking Time on Agenda Items**

For the Consent Calendar, the Mayor and Councilmembers will initially have up to five minutes each to make comments. After all members of the Council have spoken (or passed) and after public comment, members will each have two additional minutes to discuss the Consent Calendar.

For non-Consent items, the Mayor and Councilmembers will have two minutes each to make initial comments on an agenda item, except for the author of an agenda item who will have five minutes to initially present the item. After every Councilmember has spoken or declined and after public comment, Councilmembers will each have another five minutes per person to address an item. Debate may be extended beyond a second round of Council comments by a majority vote (5 votes).

Time will toll during staff answers to questions; Councilmembers are urged to ask their questions of city staff before the meeting or in writing.

**Procedure for Pulling Items from Consent or Information Calendar**

Three (3) members of the City Council must agree to pull an item from the Consent or Information Calendar for it to move to Action. Absent three members concurring, the item will stay on Consent or Information Calendar and, with respect to Consent items, the Mayor or Councilmembers will be allowed to record their aye, nay or abstain votes on individual items or the entire Consent Calendar.

Moving an item from the Action Calendar to the Consent Calendar requires the unanimous consent of the entire City Council.

**Public Comment Speaking Time**

Commented [NML47]: Relevant portions have been moved to the body for the Rules of Procedure.

With the exception of prescribed times in the Rules of Procedure for public hearings and public comment by employee unions, the amount of time for each speaker during public comment is limited to two minutes maximum and that speakers can only address an agenda item once, however the Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council. Speakers may yield their time for a maximum of four minutes per individual. If a speaker wishes to yield their time, they must indicate so when called on by the Presiding Officer and state who they are yielding their speaker time to. The Presiding Officer will keep a list with the names and amount of time yielded to individuals.

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

Public Comment on Non-Agenda Matters will be conducted in the order of hands raised on the Zoom platform, and will be limited to either the first 10 speakers during the initial round of Non-Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the

Commented [NML48]: This paragraph is only applicable to virtual-only meetings, which are currently not permitted under the Brown Act.

~~meeting adjourns. If there are five or fewer speakers with hands raised for Public Comment on Non-Agenda Matters, each speaker will have two minutes to address the City Council. If there are more than five speakers with their hands raised then speaker time will be limited to one minute per person. The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.~~

# Item 11
# City Council Rules of Procedure Amendments

SEPTEMBER 24, 2024

# Sources of Amendments

- Planned Technical Revisions from Fall 2023
- Council Direction on May 7, 2024
- Agenda & Rules Committee Recommendations

# Planned Technical Revisions

- Eliminate Appendix C (Emergency Procedure from Pandemic) and incorporate useful provisions in the body of the Rules
- Account for Hybrid Meeting Format
- Ad Hoc Committee policy alignment with Brown Act and City Commissions
- Charter Officer Definition and associated revisions
- Clarification of Public Comment rules in Chapter IV
- Update Commissions in Naming Policy (Appdx A) per commission reorganization

# Council Direction on May 7, 2024

- Proposed changes from Open Government Commission; reviewed by Agenda & Rules Committee; Council adopted committee recommendation
- Chair can reorder agenda without consent of the full Council
- If three members abstain or vote no on a Consent item, it moves to Action
- Five-minute time limit on initial Council comments on Action Items
- Officially specify hybrid format for Council meetings if feasible

# Agenda & Rules Recommendations

- Definition of a “Major Item”
- Recommended guidelines for Major Items now mandatory
- Spells out authority of Agenda & Rules with regards to Major Items
- Clarifies process for Author to remove an item from the legislative process
- Allows for Budget & Finance committee to receive notice of Major Items at other committees
- Adds new process for disposition of items from former Councilmembers and former Mayor
- Revises the previous Rules change adding a general public comment period on Action items

# Requested Action

- Approve the Rules amendments as proposed
- If further discussion is required on certain amendments, Council may adopt some/most of the proposed amendments and continue discussion on other amendments.

Office of the Mayor

Jesse Arreguín
Mayor

February 21, 2019

To: City Council Land Use, Housing and Economic Development Committee

From: Mayor Jesse Arreguin

Subject: Purposes, Procedures and Requirements for Policy Committees

As this is the first meeting of the new Land Use Policy Committee, I wanted to remind Committee members about the purposes of our committee system, the procedures adopted by the Council on December 11, 2018, and requirements for reviewing and recommending legislation to the City Council.

In thinking about a rational review process, I also wish to propose some new procedures which I hope we will adopt by unanimous consent to guide our future deliberations.

**Purposes of Policy Committees:**

As described in Resolution No. 68,726-N.S. which established our new Policy Committee system the purposes are to:

Ensure "*an efficient and standardized structure for public policy development and consideration*"; and

"*Provide the community and the City Council with adequate opportunity for detailed policy discussions outside of a meeting of the full City Council*"

As stated in the Governing Policies and Procedures for City Council Policy Committees adopted on December 11, 2018, items with moderate to significant administrative, operational, budgetary, resource or programmatic impacts should be referred to a Policy Committee.

Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.

Committees are also designed to allow a fuller review and discussion of City Council items, to allow Councilmembers to engage with authors and ask questions, to afford citizens and commissions an opportunity to comment on proposals before they come to Council and allow for recommended changes based on discussion with the Committee and the authors.

In addition, to assist in Committee and full Council review, staff will undertake a high-level, preliminary analysis of potential costs, timelines, and staffing demands associated with the item.

**Procedures Adopted by Council for Committee review:**
Items must appear on a Committee agenda within 60 days of referral by either the Agenda Committee or Council.

Within 120 days of the referral date, the Committee must vote to either (1) accept the author's request that the item remain in committee until a date certain (2) send the item to the Agenda Committee to be placed on a Council agenda with a Committee recommendation.

The Committee shall review items for completeness in accordance with Section III.B.2 and use the "Guidelines for Developing and Writing Council Agenda Items" in their analysis of items for completeness.

In addition, the Committee will engage with the author to understand the purposes, costs, and impacts and feasibility of implementation and may propose amendments to the author for consideration.

After preliminary discussion, the Committee will request that staff provide the "high-level, preliminary analysis of potential costs, timelines and staffing demands associated with the item".

After substantive policy discussion and review for completeness, the Committee will make one of the four recommendations to the City Council:

- "Positive Recommendation": Recommending Council pass the item as proposed originally by the author;

- "Qualified Positive Recommendation": Recommending Council pass the item with some changes;

- "Qualified Negative Recommendation": Recommending that Council reject the item unless certain changes are made;

- "Negative Recommendation": Recommending that the item not be approved.

If a Committee does not take final action by the 120-day deadline the item is automatically returned to the Agenda Committee and appears on the next Council agenda.

**Issue Focus of Land Use Committee:**

- Land Use
- Preservation
- Development standards
- Housing and Affordable Housing
- Disability/Universal Access
- Business and economic growth
- Business retention, attraction and development
- Civic arts and culture

**Proposed New Procedures for Committee Review:**

**Public Comment:** Public comment at the beginning of the Committee meeting should be for non-agenda items within the purview of the policy committee.

The Committee will allow public comment when each agenda item is taken up.

**Order of Committee Discussion of Items:**

1. When an item is called, the Chair will permit the author of the referred item 5 minutes to introduce the item.

2. Then the Committee will ask initial questions of the author on the proposal.

3. After initial questions, the Committee will then take public comment on the item. The Committee will follow the established time limits in the Council Rules of Procedure, 2 minutes, and if 10 or more speakers 1 minute, with time yielded for a maximum of 4 minutes per speaker.

4. After public comment, the Committee will return to discussion and possible action. Items will likely take two or more meetings to complete Committee discussion and review.

The Committee will request the financial, legal, administrative high-level analysis from staff to be presented at the next Committee meeting.

The Committee after review for completeness and discussion of policy merits, can make a Positive Recommendation to Council, or a Qualified Recommendation.

**Focus of Committee Process:**

The Policy Committee process should not just be limited to review of referred items. If time permits, the Committee should allow for hearings on policy matters within the jurisdiction of the Committee, allowing open forums to solicit input from community members or experts on relevant policy issues, and initiate policy proposals for Council consideration.

Along these lines, I am specifically proposing that the Land Use, Housing and Economic Development Committee have an open forum of 30 minutes (or more if Committee wishes to extend time) to invite representatives of Business Associations and other small business owners to speak and engage with the Committee on issues impacting businesses.

**Agenda Committee 1/16/2024**
**Item 10 - City Council Legislative Systems Redesign**
**Discussion Items - Part 1**

## Background:

The Agenda Committee presented materials and solicited input from the City Council during fall of 2023 regarding possible Legislative Systems Redesign options. The goal of Systems Redesign is to improve processes for developing, introducing, vetting, passing, funding, and implementation of Major Council Items and initiatives. Based on City Council input, the Agenda Committee has been tasked with proposing a new set of improvements to:

1. Consider possible refinements to the definition of Major Items
2. Make the Council Item Guidelines mandatory for Major Items (formerly referred to as “Policy Track Items”)
3. Establish transparent deadlines for budget processes and clarity about what kind of “asks” can be submitted/considered at each budget cycle
4. Strengthen the Committee System to provide more in-depth review and vetting of Major Items
5. Clarify levels of input from Staff and City Attorney at all stages, from development to implementation
6. Clarify processes and timelines for implementation of items once passed and funded
7. Establish protocols for one-time vetting/disposition of currently backlogged items
8. Consider yearly prioritization processes in light of the intended outcome of fewer, more fully considered Major Items in the queue

To facilitate focused discussion, this memo only addresses proposals related to items 1, 2, and 3, above. Additional considerations will be discussed at subsequent meetings.

1. **<u>Consider possible refinements to the definition of Major Items</u>**
   “Major Items” are items meeting the current definition of *Policy Committee Track Items*:

   > *“Moderate to significant administrative, operational, budgetary, resource, or programmatic impacts.”*

   Some Councilmembers expressed that the definition might be further clarified. After discussing a variety of options, and considering times when the definition might have

proved problematic, it was decided that no changes should be proposed; the definition appears to provide good guidance to members of the Agenda & Rules Committee and has not been a source of controversy to date.

Consideration was given to potentially require all Ordinance changes to be labeled Major Items, but on further discussion, it was concluded that only Ordinance changes/new Ordinances with "moderate to significant administrative, operations, budgetary, resources, or programmatic impacts" would be worthy of being considered as Major Items - thus reinforcing the appropriateness of the existing definition.

One possible improvement could be to add examples of items that may be considered Major Items, rather than to amend the rule:

> *"Examples may include, but are not limited to Items that:*
> - *Clarify or extend existing Plans, Programs, Policies and Laws in moderate to significantly impactful ways*
> - *Change/Amend existing Plans, Programs, Policies and Laws in moderate to major ways*
> - *Create a new and meaningful exception to existing Plans, Programs, Policies and Laws*
> - *Reverse/change existing Plans, Programs, Policies and Laws in moderate to significant ways*
> - *May require moderate to significant increases in funding or additional FTE for start-up and/or ongoing operations"*

**Recommendation:** Keep existing definition, add examples, and revisit should controversies occur.

2. **Make the Council Item Guidelines mandatory for Major Items (formerly referred to as "Policy Track Items")**

In discussing this seemingly straightforward concept, a number of considerations arose that are addressed in the following proposed path forward.

The Council Rules of Procedure and Order already include an outline of what is "required" for Council items, in Section XXX of the Rules. The Guidelines – suggested but not required and included in an Appendix to the Rules – were built from the Rules, providing more elaboration and specificity.

As suggested but not required, the Guidelines have not been "in conflict" with the Rules. However, adopting the Guidelines as requirements changes this equation; *the existing Rules and the Guidelines cannot both be simultaneously required*. The proposed path forward addresses the potential conflict that arises when the Guidelines are adopted as mandatory for Major Items.

In addition, if the Guidelines are mandatory only for Major Items, we must consider what will be mandatory for "all other" items – hereinafter referred to as "Standard Items." The proposed path forward thus addresses both Major Item and Standard Item requirements.

Another consideration is how the Agenda Committee will evaluate whether an item - Major or Standard - is in compliance with mandatory requirements, and what the Agenda Committee must or may do if it finds an item falls short of the requirements. The following proposal addresses these issues as well.

Finally, the Guidelines were reviewed to identify any possible edits that might be suggested prior to adoption of the Guidelines as mandatory.

**Proposal:**

1. Make Edits to Guidelines:
    a. Remove "preamble" language
    b. Make light changes to the Guidelines and expand illustrative examples
    *c. See Edited Version of the Guidelines*

2. Remove/eliminate existing Rules about how to present/write Items and adopt a two-tiered set of Rules for **Standard Items** and **Major Items**, based on the Guidelines.
    a. For **Major Items**, make the full Guidelines MANDATORY
    b. For **Standard Items**, make elements **1, 2, 3, 4, 5, 14 and 15** of the Guidelines MANDATORY, with other elements RECOMMENDED.
    c. **Drafting Consideration** - Keep the Guidelines as an Appendix – incorporated by reference into the Rules – rather than "pasting" the full Guidelines directly into the Rules.

d. **Clerk Templates** - the Clerk's Office will create updated, more user-friendly and easily accessible templates for Major and Standard Items, as well as for Supplemental, Late, and other Submissions.
e. For "**Speciality Items**" such as D13 Account grants, letters and resolutions in support of State or Federal Legislation, and other "special" Item types, the Clerk's Office will provide updated RECOMMENDED templates.

3. **For MANDATORY elements of *both Major and Standard Items***, suggest adopting the following (or similar) standard for review by the Agenda Committee:

   *If a Major or Standard Item, as submitted by the Primary Author, does not substantially and materially meet reasonably applicable Mandatory Elements of the Guidelines, the Agenda & Rules Committee shall request, and may require, that the Primary Author provide additional analysis and/or consultation to fulfill Guideline requirements.*

   *If the Agenda & Rules Committee requests or requires the Primary Author to provide additional analysis or consultation, the Item may or shall be referred back to the Primary Author and may be resubmitted for a future Agenda.*

4. **For RECOMMENDED elements of Standard Items and Speciality Items**, authorize the Agenda Committee to do what it currently has the power to do under Rules Section (C)(1) (with some edits):

   *Refer the item back to the Primary Author for adherence to ~~required~~ recommended form or for additional analysis as ~~required~~ recommended in Section III.B.2 (Primary Author may decline and request Policy Committee assignment).*

5. **For Emergency/Time Sensitive Items**, Items can bypass mandatory Guidelines requirements if the Agenda Committee makes the findings for a Time Critical Track Item (existing definition).

   **Proposed Standard for allowing Emergency/Time Sensitive Items to go forward without fulfilling the Mandatory Guidelines:**

*The Agenda Committee may make an exception to Mandatory Guidelines requirements for a Major or Standard Item if the Item meets the definition of a Time Critical Track Item, as provided in Section (3)(g)(1) of the Rules, in which case the Item may go forward as submitted on the Action Calendar for the Agenda under consideration with a notation, added by the Clerk's Office, that additional materials have been requested by the Agenda Committee. The Primary Author shall submit such additional materials as a Supplemental 1 filing.*

**Time Critical Track Item Definition (existing, Section (3)(g)(1)):**
*A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council.*

6. **Appeals - provide a mechanism to appeal Agenda Committee decisions to the full Council?**
   May be advisable to have a bypass mechanism - or not?

3. **Establish transparent deadlines for budget processes and clarity about what kind of "asks" can be submitted/considered at each budget cycle**

The Council did not support a single, yearly cycle for submitting Council items, but expressed a desire for clear deadlines to be established for submission/ consideration of items for various budget processes. In addition, questions have arisen regarding what kinds of requests can/should be submitted for consideration at various junctures in the yearly/biennial budget cycle.

Overall, it was determined that *the Agenda Committee should formally ask the Budget Committee for guidance on these questions*, as they fall more squarely into the Budget Committee's purview.

- By when should Standard and Major Items with budgetary considerations be passed out from Council to be considered in the June budget adoption/update?
- Working back from that date, by when should a Major Item or Standard Item be submitted, to allow time for consideration by the appropriate

Policy Committee and/or the City Council? (This may be a question for Agenda & Rules Committee to determine, once B&F sets the deadline)

- What kinds of budget requests are allowed/appropriate for the June budget?
- Consider establishing deadlines for the City Manager to bring Budget Updates (Fall and Spring) to the City Council.
- With established deadlines for Budget Updates, work back to establish deadlines for Major and Standard items to be submitted for consideration at each Budget Update. (This may be a question for Agenda & Rules Committee to determine, once B&F sets the deadline)
- What kinds of budget requests will be considered at Fall and Spring updates - from both Council and from the City Manager/Staff?
- If only emergency/time sensitive requests will be considered (or, for example, expansions of existing programs but not new programs, etc.), how will excess funds, if any, be rolled over and made available for Council priorities at the next June budget?

# APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

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~~These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item.~~ These ~~g~~Guidelines are mandatory for all Major Items and strongly recommended for ~~all other council reports~~Standard Items. While not all elements ~~would be~~are applicable to every type of ~~A~~agenda item, the Guidelines~~y are intended to~~ prompt Authors to consider important elements of a complete item and to present ~~presenting~~ items with as much relevant information and analysis as possible.~~–~~

~~Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:~~

~~2. Agenda items shall contain all relevant documentation, including the following as Applicable:~~

~~a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;~~

~~b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;~~

~~c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);~~

~~d. Fiscal impacts of the recommendation;~~

~~e. A description of the current situation and its effects;~~

~~f. Background information as needed;~~

~~g. Rationale for recommendation;~~

~~h. Alternative actions considered;~~

~~i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);~~

~~j. Person or persons to contact for further information, with telephone number. If the Primary Author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be~~

~~duplicated. In such case the agenda item distributed with the packet shall so indicate.~~

Guidelines for City Council Items:

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12. Fiscal ~~Impacts~~Considerations
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   A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

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3. **Recommendation**
   Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

   Common action options, ~~-~~that can be presented singularly or in combination with others, include:
   - Adopt first reading of ordinance
   - Adopt a resolution
   - Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
   - Direction to the City Manager (City Manager is directed to execute the recommendation right away~~,~~; it is not placed on any referral list)
   - Referral to a Commission, ~~or to a Standing or Ad Hoc~~ Council Policy Committee, or other Legislative Body

- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

4. **Summary Statement~~/ "Current situation and its effects"~~**
   A short resume of the circumstances that give rise to the need for the recommended action(s).
   - Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
   - Example (fictional):
     *Winter rains are lasting longer than expected. Berkeley's winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley's winter shelters open until the end of April, and refers to the Budget Process $40,000 to cover costs of an additional two months of shelter operations.*

5. **Background**
   A full discussion of the history, circumstances and concerns to be addressed by the item.
   - For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

6. **Review of Existing Plans, Programs, Policies and Laws**
   Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

   Review of all pertinent/applicable sections of:
   - The City Charter
   - Berkeley Municipal Code
   - Administrative Regulations
   - Council Resolutions
   - Staff training manuals

   Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan
- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan
Review of similar legislation previously introduced/passed by Council
Review of County, State and Federal laws/policies/programs/plans, if applicable

7. **Actions/Alternatives Considered**
   - What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
   - What solutions/measures are recommended by **advocates, experts, organizations**?
   - What is the range of actions considered, and what are some of their major pros and cons?
   - Why were other solutions not as feasible/advisable?

8. **Consultation/Outreach Overview and Results**
   - Review/list external and internal stakeholders that were consulted, as relevant.
     - **External**: constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
     - **Internal**: staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, City Clerk, etc.
     - **Commissions**: what Commissions were or will be consulted and what were their recommendations/concerns/suggestions?
   - What reports, articles, books, websites and other materials were consulted?
   - What was learned from these sources?
   - What changes or approaches did they advocate for that were accepted or rejected?

9. **Rationale for Recommendation**

A clear and concise statement as to whether the item proposes actions that:
- Conform to, clarify or extend existing Plans, Programs, Policies and Laws

- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented, but should be presented/restated/summarized. ~~Plus~~In addition, further elaboration of terms for recommendations, if any, should be spelled out with clarity.

- Example: *Keeping winter shelters open for an extra three months extends the City's existing Winter Shelter program in a minor way. The shelters have been open during inclement weather every year for decades, and have been extended to accommodate extended rainy and cold seasons in previous years. Keeping winter shelters open through April ensures our homeless neighbors will continue to have a place to keep dry and warm and supports the City's strategic plan goal of providing services to those with critical needs in our community. All services associated with the Winter Shelter program, including but not limited to meal and storage services, are specifically included in the direction to extend the program.*

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation? Initial, high-level consultation with the City Manager and/or the City Attorney regarding implementation, administration, and enforcement is strongly recommended, but not required.

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal ~~Impacts~~Considerations**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs and benefits. Initial, high-level consultation with the City Manager and/or the City Attorney regarding the fiscal impacts of the proposal is strongly recommended, but not required.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any.

- ~~(i.e.,~~Example: *"it is expected that ~~100~~ 300 homeless people will be ~~referred to housing every year~~able to access dry and warm shelter during the 3-month extension of the winter shelter program"~~)~~*

Also state~~and~~ what reporting or evaluation is recommended.

- Example: *The shelter operator shall keep an accounting of the number and any available demographic information about individuals who use the shelter during the extension period and report to the City Council, through the City Manager, on success or challenges of the program extension).*

**14. Contact Information**

**15. Attachments/Supporting Materials**

# APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These Guidelines are mandatory for all Major Items and strongly recommended for Standard Items. While not all elements are applicable to every type of agenda item, the Guidelines prompt Authors to consider important elements of a complete item and to present items with as much relevant information and analysis as possible.

Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Considerations
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

---

1. **Title**
   A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

2. **Consent/Action/Information Calendar**
   Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

3. **Recommendation**
   Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

   Common action options, that can be presented singularly or in combination with others, include:
   - Adopt first reading of ordinance
   - Adopt a resolution

- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away; it is not placed on any referral list)
- Referral to a Commission, Council Policy Committee, or other Legislative Body
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):
  *Winter rains are lasting longer than expected. Berkeley's winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley's winter shelters open until the end of April, and refers to the Budget Process $40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:
- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:
- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan
- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan
Review of similar legislation previously introduced/passed by Council
Review of County, State and Federal laws/policies/programs/plans, if applicable

7. **Actions/Alternatives Considered**
   - What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
   - What solutions/measures are recommended by **advocates, experts, organizations**?
   - What is the range of actions considered, and what are some of their major pros and cons?
   - Why were other solutions not as feasible/advisable?

8. **Consultation/Outreach Overview and Results**
   - Review/list external and internal stakeholders that were consulted, as relevant.
     - **External**: constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
     - **Internal**: staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, City Clerk, etc.
     - **Commissions**: what Commissions were or will be consulted and what were their recommendations/concerns/suggestions?
   - What reports, articles, books, websites and other materials were consulted?

- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

**9. Rationale for Recommendation**

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented, but should be presented/restated/summarized. In addition, further elaboration of terms for recommendations, if any, should be spelled out with clarity.

- Example: *Keeping winter shelters open for an extra three months extends the City's existing Winter Shelter program in a minor way. The shelters have been open during inclement weather every year for decades, and have been extended to accommodate extended rainy and cold seasons in previous years. Keeping winter shelters open through April ensures our homeless neighbors will continue to have a place to keep dry and warm and supports the City's strategic plan goal of providing services to those with critical needs in our community. All services associated with the Winter Shelter program, including but not limited to meal and storage services, are specifically included in the direction to extend the program.*

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation? Initial, high-level consultation with the City Manager and/or the City Attorney regarding implementation, administration, and enforcement is strongly recommended, but not required.

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Considerations**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs and benefits. Initial, high-level consultation with the City Manager and/or the City

Attorney regarding the fiscal impacts of the proposal is strongly recommended, but not required.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any.

- Example: *"It is expected that 300 homeless people will be able to access dry and warm shelter during the 3-month extension of the winter shelter program."*

Also state what reporting or evaluation is recommended.

- Example: "*The shelter operator shall keep an accounting of the number and any available demographic information about individuals who use the shelter during the extension period and report to the City Council, through the City Manager, on success or challenges of the program extension).*"

**14. Contact Information**

**15. Attachments/Supporting Materials**

Kate Harrison
Councilmember District 4

# SUPPLEMENTAL AGENDA MATERIAL
# for Supplemental Packet

**Meeting Date:** **October 10, 2023**

**Item Number:** **1**

**Item Description:** **City Council Legislative Systems Redesign**

**Submitted by:** **Councilmembers Harrison, Robinson, and Taplin**

Refer to the Agenda Committee the elements contained in the “Alternative Legislative Alignment Process” as described in the background section.

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E-Mail: *kharrison@CityofBerkeley.info*

Kate Harrison
Councilmember District 4

ACTION CALENDAR
October 10, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison (Author), Councilmember Robinson (Co-Sponsor), and Councilmember Taplin (Co-Sponsor)

Subject: Alternative Council Legislative Process

## RECOMMENDATION

Refer to the Agenda Committee the elements contained in the "Alternative Legislative Alignment Process" as described below in the background section:

1. Incorporate positive elements of the Councilmember Hahn proposal, including mandatory Council memo guidelines, a formal process for City staff to provide conceptual input to authors, re-evaluating backlogged items for potential removal, and policy committees' using a checklist to guide their analysis;[1]
2. Establish objective definitions and provide for comprehensive consideration of significant items;
3. Require referrals and budget requests over a given threshold to be considered first by a policy committee.
4. Preserve and formalize rolling deadlines for significant item submission;
5. Retain policy/budget judgement and prioritization to Council as a whole rather than policy committees, while tasking committees with role of ensuring items are drafted to form and sufficiently inform Council and the public's consideration.

## CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

At the October 2019 Council retreat, the Council and the City Manager discussed approaches to better align the legislative process to the budget and ensure implementation was feasible. In particular, many referrals to the City Manager were not well drafted and were not reviewed by policy committees before being referred. Many budget referrals were also not considered by policy committees despite their potential to have outsized impacts on staff and budgetary resources. Even with the referral ranking system, there remain a sizeable backlog of items that are not necessarily funded or considerate of staff resources. Councilmembers have not identified a sufficient number of lower-ranked items for removal from the list and may remain there for years.

[1] Councilmember Hahn, Draft Proposal, p. 44., https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-09-18%20Agenda%20Packet%20-%20Agenda%20Committee.pdf

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These considerations merit Council consideration and possible action. At the same time, proposals dictating how often Council can submit legislation and overly complex rules for policy committees risks veering into limiting councilmembers' legislative authority, fails to respond to emerging circumstances, is unprecedented in comparable cities and risks violating the spirit if not the letter of the City Charter. This item finds that (1) policy committee system created in 2018 is fundamentally sound with certain enhancements, and (2) that the problem that needs to be addressed is ending the practice of allowing significant policy and budget referrals to bypass the policy committee system.

Before Council could consider the issue in depth, the COVID-19 pandemic occurred. During the first year of the COVID-19 pandemic, the Mayor and Council briefly suspended consideration of nearly all non-emergency Council legislation and meetings of committees and commissions. As the pandemic wore on, the reality of governing and the needs of the people, including the pressing need for street improvements, responses to our affordable housing crisis, the murder of George Floyd and socio-economic factors – some related and some not to the pandemic – made introducing no new policy infeasible, and Council began legislating anew.

On June 15, 2021 City Management proffered its "Systems Alignment Proposal" proposal to Council. The proposal recommended restricting the time period for submitting Council items (exempting Departments and the City Manager) to only four months per year, among other details, citing the need for more in depth budgetary and implementation analysis. However, the Council's policy committees, created shortly before this time, were tasked with vetting items for any staffing impacts in light of vacancies and considering budget impacts Current rules provide that the policy committees are to:

- review items for completeness and alignment with Strategic Plan goals;
- ensure Council items include adequate discussion of budget implications, administrative feasibility, basic legal concerns, and staff resource demands to allow for informed consideration by the full Council;
- include a positive, qualified, or negative "Committee recommendation" based on these criteria. [2]

Many items improved significantly through the committee process.

Questions about the impact of the city management proposal on the City Charter were outlined in an alternative Council item submitted by Councilmember Harrison in June 2021.[3] Ultimately the City Manager's proposal was not adopted by Council, and was

[2] Berkeley City Council Rules of Procedure, https://berkeleyca.gov/sites/default/files/documents/City%20Council%20Rules%20of%20Procedure%20-%20July%2011%202023%20-%20FINAL.pdf.

[3] Councilmember Harrison, "Comments and Alternative Systems Alignment Proposal," June 15, 2021, https://records.cityofberkeley.info/PublicAccess/api/Document/AemaKwyWOMW%C3%89OLzGWGj2m%C3%81pnQxBkfMC7W2S7PsoYWkE%C3%81c3kNbNXoWpsj%C3%891iLPosUUV90e0sL0rH3HFNV2BEtmCo%3D/.

instead referred to the Agenda Committee for consideration alongside alternative proposals. The City Manager has indicated that it would be inappropriate for the City Manager under the Charter to be recommending or determining how the Council makes policy decisions. Indeed, the policy and legislative function is firmly lodged under the Council per the Charter as was noted in Councilmember Harrison's 2021 alternative item.

Some of the elements of the City Manager's 2021 proposal have reemerged as part of a new proposal led by Councilmember Hahn through the Agenda Committee. According to the Agenda Committee record, Councilmember Hahn indicated that her proposal represents an understanding between the City Manager and City Clerk's office. The City Manager noted that "there are characteristics of my [the City Manager's] proposal woven into what you [Councilmember Hahn] will be providing [the Council]" but has indicated this is clearly a matter for Council to determine.

The Council's process is not fundamentally flawed, and does not require measures such as a nearly 300-day legislative process for "major items." The Council's Policy Committee and budget process systems are sound, and among other updates the main task before Council is to close outstanding loopholes to the committee process.

This alternative item builds upon the proposal submitted by Councilmember Harrison in 2021, comments directly to the positive and less positive elements of Councilmember Hahn's proposal, and offers an updated alternative proposal that better aligns the legislative process to the budget and staff implementation process without sacrificing Berkeley's democratic process, and directly deals with referrals and budget requests submitted without sufficient budget and implementation analysis.

Certain elements of the legislative processes that have largely bypassed the policy committee process include: (1) referrals to the City Manager, (2) departmental, City Manager, including some major policy items, and (3) departmental, City Manager and Council budget referrals. All of these can have an outsized impact on limited budget resources and staff time and should be incorporated in the policy committee process ahead of the respective budget process. The policy committees are where—before passing out an item—significant budgetary impacts and feasibility, in addition to the proposals merits, ought to be determined.

*We can fix the process without stripping the people's representatives of their Charter responsibility to respond to the public's needs and of due process to propose, debate, and consider legislation.*

## BACKGROUND

### *Positive Aspects of the Councilmember Hahn Proposal*

- Council items are required to follow the guidelines already promulgated rather than leaving these guidelines as recommended only;[4]
- Formal process for City staff to provide high level conceptual input to authors before they submit proposals;[5]
- Process for addressing or re-prioritizing the "backlog" of unfunded items;[6]
- Major Items passed by Council but not funded are automatically rolled-over to future funding opportunities (this has already been implemented to a certain extent).[7]
- Policy Committees' analysis is enhanced using a checklist (excluding Hahn proposal to rate items).[8]

### *Concerns about the Councilmember Hahn Proposal*

- Does not clearly articulate the specific legislative problems it is trying to solve, or provide examples of how the current system is "[in]consistent[]," how it "overwhelm[s]" City staff, and how the current system fails to "[s]uccessfully implement state of the art and/or innovative programs and policies."[9]
- Severely limits the public's access to the democratic process and extends the legislative process for "Major Items" to nearly 300-days (September to July and beyond). This compares to the current expected 120-day timeline. Items can that quickly become stale or inadequate by the time they are finally implemented.[10] The proposal does not appreciate the September deadline artificially circumscribes Council's ability to be responsive to public.[11] For example, if a Councilmember develops a non-time critical but nonetheless important piece of major legislation in October, the public will have to wait 11 months until September plus another nine months (July of the next year) before the item can be budgeted and implemented.
- Does not align with the fall budget process in which "excess equity" is considered and most council budget referrals are funded.
- Does not subject City Management's "Major Items" to the same review. Neighboring cities such as Oakland require all non-time critical staff policy items to be routed through Policy Committees so all budgetary decisions (the purview of Council) are made against the same criteria.[12]
- Provides Agenda Committee with too much power to determine pick 'winners and losers' as to what constitutes a "Major Item" or time critical. Existing and proposed definition of "Major Item" and "Time Critical" are overly subjective.[13]
- Provides Policy Committees inappropriate authority to prioritize/score items they review. Currently, Policy Committees provide recommendations about individual

[4] Councilmember Hahn Draft Proposal, p. 44.
[5] Id., p. 43.
[6] Id., p. 47.
[7] Id., p. 44.
[8] Id., p. 36.
[9] Id., p. 24.
[10] Id., p. 43.
[11] Id. p. 27.
[12] Oakland City Council Rules of Procedure, March 8, 2023, https://www.oaklandcityattorney.org/wp-content/city-council/89588%20CMS.pdf. See also Councilmember Hahn Draft Proposal, p. 27.
[13] Id., p. 44.

policies, and Council as a whole is rightly tasked with prioritizing and scoring items in terms of approval and budgeting.[14]

- Asserts that Policy Committees are a burden on staff and the Council, when in fact they have been shown to benefit the legislative process and reduce discussion at full Council. The Council's policy committees would only be allowed to meet to consider major legislation during less than six months of the year (down from the current nine months).[15]
- Requires Council to score items as part of the budget process through opaque and non-public processes, rather than through the current deliberative Council meeting process, Budget Committee, and Mayoral budget process provided for in Charter.[16]
- Creates an implementation team that includes the Councilmember author after it is passed by a policy committee. The stated goal is to "establish clarity of intentions, sketch timelines, discuss opportunities, ideas, challenges, etc." These are functions that the policy committees are tasked to do. The role for the Councilmember should be circumscribed as to prevent inappropriate meddling in administrative matters that are assigned to the City Manager under the Charter.[17]

### *Alternative Council Legislation Alignment Proposal*

From the perspective of the authors of this item, a workable and sensible democratic process proposal should include the following:

Incorporate Positive Elements of Councilmember Hahn Proposal

- The positive elements listed above under "Positive Aspects of the Councilmember Hahn Proposal."

Establish Objective Definitions and Comprehensive Consideration of Significant Items

- Establish *objective* definitions for items with "significant" or "insignificant" budgetary or staffing implications, e.g., a dollar figure threshold, number of FTE needed, or requirement for consultant work. The current system fails to define "moderate to significant" and leaves subjective discretion to the Agenda Committee. This would ensure fairness amongst all Councilmembers. Alternatively, items could be referred directly to Policy Committees for such determination bypassing the Agenda Committee, unless deemed time critical.

  Under this proposal, significant items would be subject to the normal maximum 120-day Policy Committee review timeline and include some of the enhancements offered by Councilmember Hahn. Items with insignificant impacts could be routed directly to Council or be provided a more streamlined maximum 90-day timeline and a less intensive review. In the case that items referred under

[14] Id.
[15] Id., p. 26.
[16] Id.
[17] Id., p. 45

the 90-day timeline are found by the Policy Committee to have more significant impacts, a committee would be empowered to extend the item to 120 days for enhanced review.

- Ensure that all items submitted as referrals to the City Manager or budget referrals over the threshold are thoroughly vetted by Policy Committees and include estimates of all budget and staffing implications before coming out of the committee process so that they can be properly routed to the budget process.

- Ensure that policy items from City Management and Departments (other than time critical contracts and strictly administrative matters) are routed to policy committees as in Oakland and San Francisco.

Preserve and Formalizing Rolling Deadlines for Significant Item Submission

- Provide rolling submission deadlines ahead of applicable biennial (July), annual adjustment (July), and annual appropriation ordinance budget processes (fall/spring). The Council and City Manager may strive to encourage Councilmembers to submit the bulk of their items to the biennial and AAO #1 processes, but circumstances and community demands may warrant submission and consideration at other budget process periods. The Council, Mayor, and Budget Committee should, as in the past, continue to defer items or not fund items with significant budgetary or staffing implications as appropriate. There does not need to be an artificial deadline imposed on items.

Retain Policy/Budget Judgement and Prioritization to Council as a Body, While Tasking Committees with Ensuring Items Are Drafted to Form and Sufficiently Inform Council and Public Consideration

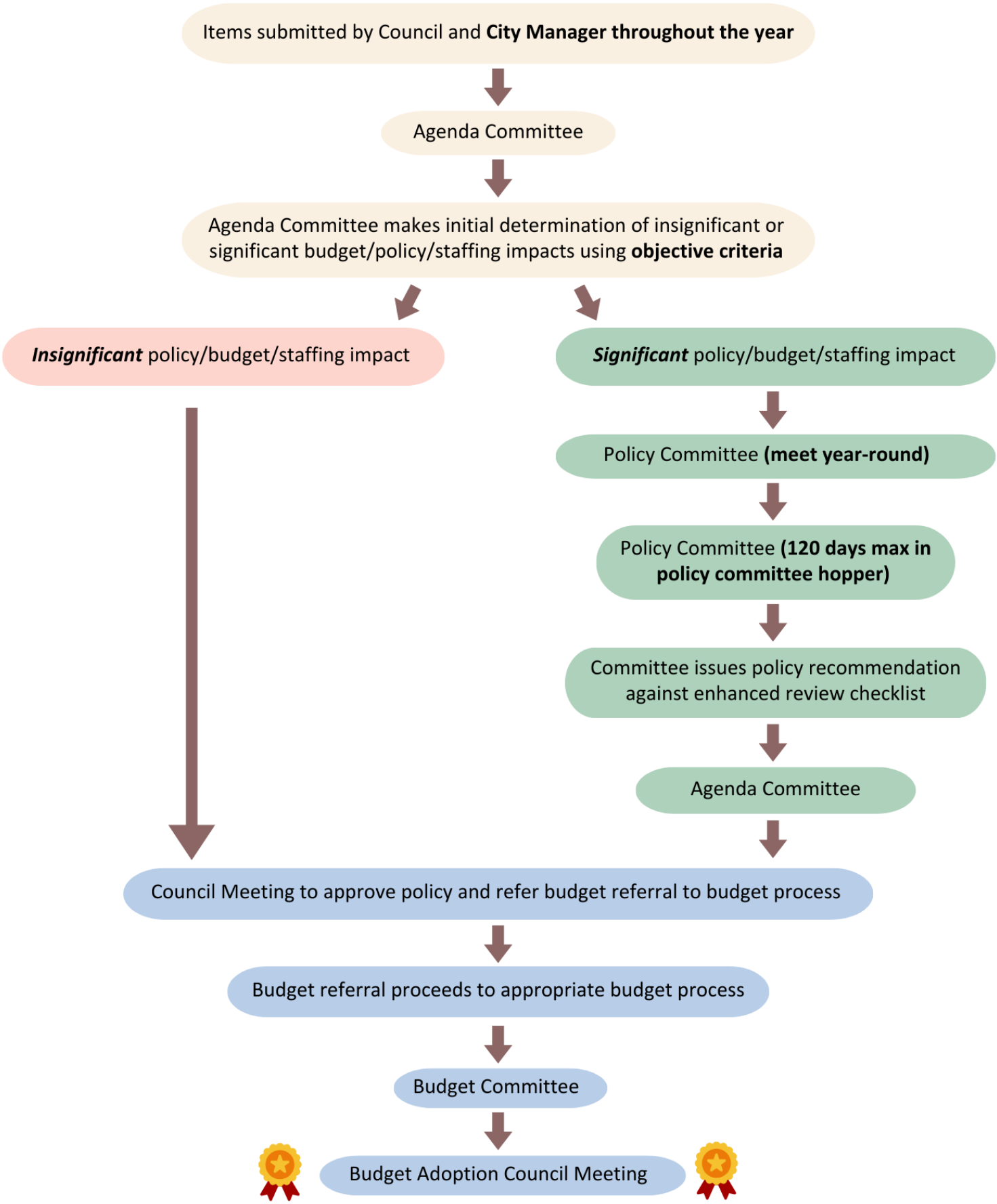
- Pursuant to the Council's historic rules of procedures, *subjective judgements* of legislation are appropriately the purview of the Council as a whole, not Committees.

This alternative proposal would achieve the important goal of aligning Council items with significant budget and staff impacts with legislation in an objective way that is not detrimental to the Council's obligations under the Charter and the public's right to representative democracy.

CONTACT
Councilmember Kate Harrison
kharrison@cityofberkeley.info | 510-981-7140

ATTACHMENTS:
1. Flowchart of Alternative Systems Alignment Proposal

# Alternative Council Legislative Process Proposal



Office of the Mayor

WORKSESSION
October 10, 2023

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: City Council Legislative Systems Redesign

BACKGROUND
On February 8, 2021, at the direction of City Council during a retreat, the City Manager presented a Systems Alignment Proposal to the Agenda and Rules Committee. Following discussion, the Systems Alignment proposal was calendared for a future Council meeting.

On April 26, 2021 the Systems Alignment proposal was presented to All Council.

Councilmember Droste submitted a response to the Systems Alignment proposal at the May 18, 2021 meeting followed by Councilmembers Hahn and Harrison at the June 15, 2021 meeting. During the June 15, 2023 Council engaged in discussion and referred the Systems Alignment proposal to the Agenda and Rules Committee for further consideration.

On March 14, 2023, Councilmembers Robinson and Wengraf presented Reforms to Public Comment Procedures at meetings of the City Council for discussion and action.

At the Agenda & Rules Committee Councilmember Hahn, in collaboration with the City Clerk and other staff, presented “Major Item Legislative, Budgeting & Implementation Systems Redesign”. Upon deliberation, the Agenda & Rules Committee set a worksession for full council discussion on October 10, 2023.

In order to assist Council in understanding the various recommendations from previous meetings, Mayor Arreguin directed his staff, with assistance from Councilmember Wengraf’s staff, to create a matrix of all the proposals and responses from City Councilmembers at the relevant meetings which was reviewed at the September 26, 2023 Agenda and Rules Committee meeting.

CONTACT PERSON
Mayor Jesse Arreguín 510-981-7100

Attachments:
1: PowerPoint Presentation
2: Council Rules of Procedure – Appendix B
3: Comparison Matrix
4: Background Materials

# MAJOR ITEM

# Submission, Review, Approval, Funding, & Implementation

## PROCESS SKETCH FOR DISCUSSION

Presented to Berkeley City Council
by the Agenda & Rules Committee

October ##, 2023

# TERMINOLOGY

# MAJOR ITEM

Is an Item meeting the *current/existing* definition of a **Policy Committee Track Item**:

***Moderate to significant administrative, operational, budgetary, resource, or programmatic impacts***

# BIG IDEAS

COUNCIL/MAYOR - **Successfully develop and implement State of The Art/ Innovative Programs and Policies to serve Berkeley, and to model best practices**

CITY CLERK - **Consistency in process for Major Item Development, Budgeting and implementation**

CITY ATTORNEY **– Ensure legal and drafting compliance**

CITY MANAGER - **Help the Organization deliver without overwhelm; help staff be successful in their work**

# YEARLY CYCLE

## Built around JUNE 30 Budget Adoption/Update

**July – September**

COUNCIL
Finalize Y2 Items

CITY MANAGER
Implement Y1 Items

**October – March**

COMMITTEE SEASON

**April – June**

COUNCIL + BUDGET SEASON

# LEGISLATIVE SESSION

## One Cycle – Benefits

- **Every Year, opportunity to submit** and have Council review/vote on and fund Major Items
- **Four Subject Matter Committees** only meet during a Committee Season (except if emergency or special circumstance)
- Staff can **focus on implementation** during the "off season," and Councilmembers can finalize the next year's items
- Significantly **reduce gap between approval and implementation**

# MAJOR ITEM DEVELOPMENT & SUBMISSION

## *All Year → End of September*

- Must use **Major Item Guidelines** format (Appendix B to Council Rules of Procedure & Order)
- September 30 **Submission Deadline**
- Major Items **can be submitted prior** to September 30 and reviewed by Agenda & Rules for **compliance with guidelines**
- Timeline allows for Councilmembers to **work all year** on items, with **concentrated opportunity** July-September
- **Staff input** at Pre-submission = high level/conceptual; early vetting of concepts with **City Attorney** to identify legal & drafting inputs

# AGENDA COMMITEE

# OCTOBER

## *Review & Assign Major Items to Committees*

- Early October **Special Meeting(s)**
- Review Major Items for **compliance with Guidelines**
- Assign *compliant* Major Items to Policy Committees
- Send *non-compliant* Major Items back to Authors for resubmission by End of October

# POLICY COMMITTEES

## OCTOBER – MARCH

- Organizing Meeting(s) Mid-October – Plan Committee Session/Schedule Hearings
- Major Items reviewed by Committee and move out on Rolling Basis, November - March
- [Committees may also prioritize/score items they review]
- All Major Items OUT of Policy Committees by March 30

# CITY COUNCIL

## APRIL

- Vote on all Major Items by **April 30**
- May require special meeting(s) in April
- **City Attorney** sign-off on **drafting and legal conformity** of Ordinances, Resolutions, and Formal Policies
- Approved items sent to **Budget Committee**

# PRIORITIZATION OF MAJOR ITEMS*

## EARLY MAY

- All **Major Items** that have been passed by Council, both NEW and PENDING/previously unfunded, to be prioritized by Councilmembers
- Prioritization due Second Friday in May (process TBD)

** Not the same as All-Item prioritization*

# BUDGET COMMITTEE

## MAY - JUNE

- Council [and Committee?] Prioritizations provided to Budget Committee as guides, but **not binding**
- Budget Committee makes **Recommendations** to Full Council
- Budget passed; Major Items funded move forward to **Implementation**
- ROLLOVER: Major Items passed by Council but not funded get **automatically rolled-over** to future funding opportunities

# IMPLEMENTATION

## JULY +

- **Implementation Lead** assigned by **City Manager**
- **Implementation Team** assembled by **Lead + CM**
- Meet with **Author(s)** to clarify intentions, sketch timelines, discuss opportunities, ideas, challenges
- **Implementation Team** prepares
  - **Launch Plan**
  - **Operating Plan**
- Program/Policy is **Launched + Implemented**

SPECIAL TOPIC # 1

# OVERRIDE

## for Time Critical Items

- Rules of Procedure and Order already provide Override:

  ***An item that would otherwise be assigned to a Policy Committee may bypass Policy Review if the Agenda Committee deems it Time Critical. Agenda & Rules Committee retains discretion to decide the Time Critical nature of an item***

- Time Critical definition - may need to be reviewed/amended
- May still go to a Policy Committee or directly to Council, per A&R
- [**Possible Add**: Council-level override/appeal if Author doesn't agree with the A&R decision on Time Critical nature of a Major Item].

SPECIAL TOPIC # 2

# PRE-SUBMISSION DETAILS

- **Guidelines Format Mandatory** for all Major Items
- **Only Authors (no Co-Sponsors) allowed** at Pre-Submission and Committee stages, to reduce Brown Act issues
- Available: **Pre-Submission Consult with City Manager** to recommend internal subject matter experts for high-level input
- Required: **Pre-Submission Consult with City Attorney** to identify legal and drafting considerations
- ***Consider role for COMMISSIONS*** *in Pre-Submission Phase*

# STRENGTHEN COMMITTEE REVIEW

SPECIAL TOPIC # 3

## DEVELOP STANDARDS for review of Major Items:

- Relevance to Strategic Priorities or current needs/events
- Added value of program/policy
- Potential benefits/costs of program/policy to Community and COB
- Alternative means to achieve same or similar goals
- Phasing/timelines for implementation
- Staffing and Resources needed to Launch and Operate
- Evaluation/Metrics/Enforcement
- [Rate/Rank Major Items at end of Committee Session?]
- [Increase options re: positive and negative recommendations?]
- Other?

# STRENGTHEN COMMITTEE REVIEW

SPECIAL TOPIC # 3

## Public, Staff, City Attorney, Commission Inputs

- Active Outreach to all identifiable Stakeholders
- Multiple Hearings to allow for robust community, Staff, and City Attorney inputs + Discussion
- ENHANCE/EMPOWER City Attorney & Staff participation to ensure meaningful input, without requirement for formal reports
- Committee Schedule (set early October) will help ensure the right staff/attorneys are present for each item
- *Consider how to obtain/integrate input from Commissions*

SPECIAL TOPIC # 4

# PRIORITIZATION – SPECIAL *BACKLOGGED QUEUE*

Need a one-time process to "clear the backlog" of Major Items *currently* in queue. Suggest sending all pending (but not initiated) items to Policy Committees for review to suggest:

- Merging items and/or Updating Referrals
- Re-approval of items "as is"
- Recommendation to Sunset/Remove moot items
- Recommend disposition of all items, ranked By Lead Department
- Council reviews and approves Committee recommendations for consolidation, removal, restatement, and re-support of items
- May need some criteria - to ensure all council members get at least some of their priorities addressed
- May also include consideration of an RRV- or other kind of prioritization by full Council, organized by Lead Department and/or holistically

SPECIAL TOPIC # 5

# PRIORITIZATION – REGULAR

## *YEARLY QUEUE*

- Enhanced Committee process should result in fewer or no backlogs and items implemented in a reasonable timeframe
- Prioritization becomes less of a BIG ISSUE

**Prioritization in a rationalized system:**

- More fully conceived and vetted items
- Committee scoring and/or ranking of items at end of Committee Season
- Council Ranking of items by Lead Department and Overall

SPECIAL TOPIC # 6

# Need Process & Criteria for funding Items at AA01 and AA02

***High Level Suggestions – need input from Budget & Finance***

- Only Time Critical and Rollover (previously approved but unfunded) items considered - *same rule for Council and City Manager items*
- Not all extra funds (if any) get allocated - reservation for the annual budget process so funds are available for Council initiatives going through yearly legislative process
- AA01 and 02 only for one-time and/or time sensitive needs, except special circumstances

# IMPLEMENTATION

SPECIAL TOPIC # 7

## Once Major Item is passed + funded, move to Implementation

- **Implementation Lead** is assigned by City Manager – *Single Individual* Responsible for managing and ensuring implementation
- **Implementation Team** assembled by Lead + City Manager
- **Consult with Author**(s) to clarify intentions, sketch timelines, discuss opportunities, ideas, challenges
- Implementation Team prepares **LAUNCH** and **OPERATING** Plans
  - **LAUNCH** elements + Timeline
  - **OPERATING** Plan
- Long term/ongoing operation of program/policy

# DISCUSSION + QUESTIONS

# APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the Primary Author of an item provide "additional analysis" if the item as submitted evidences a "significant lack of background or supporting information" or "significant grammatical or readability issues."

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt Authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
   a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
   b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
   c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
   d. Fiscal impacts of the recommendation;
   e. A description of the current situation and its effects;
   f. Background information as needed;
   g. Rationale for recommendation;
   h. Alternative actions considered;
   i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
   j. Person or persons to contact for further information, with telephone number. If the Primary Author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Impacts
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

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**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

4. **Summary Statement/ "Current situation and its effects"**

   A short resume of the circumstances that give rise to the need for the recommended action(s).

   - Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
   - Example (fictional):
     *Winter rains are lasting longer than expected. Berkeley's winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley's winter shelters open until the end of April, and refers to the Budget Process $40,000 to cover costs of an additional two months of shelter operations.*

5. **Background**

   A full discussion of the history, circumstances and concerns to be addressed by the item.

   - For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

6. **Review of Existing Plans, Programs, Policies and Laws**

   Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

   Review of all pertinent/applicable sections of:

   - The City Charter
   - Berkeley Municipal Code
   - Administrative Regulations
   - Council Resolutions
   - Staff training manuals

   Review of all applicable City Plans:

   - The General Plan
   - Area Plans
   - The Climate Action Plan
   - Resilience Plan
   - Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan
Review of similar legislation previously introduced/passed by Council
Review of County, State and Federal laws/policies/programs/plans, if applicable

**7. Actions/Alternatives Considered**

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

**8. Consultation/Outreach Overview and Results**

- Review/list external and internal stakeholders that were consulted
  - **External**: constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal**: staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

**9. Rationale for Recommendation**

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

10. **Implementation, Administration and Enforcement**
    Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

11. **Environmental Sustainability**
    Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

12. **Fiscal Impacts**
    Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

13. **Outcomes and Evaluation**
    State the specific outcomes expected, if any (i.e., *"it is expected that 100 homeless people will be referred to housing every year"*) and what reporting or evaluation is recommended.

14. **Contact Information**

15. **Attachments/Supporting Materials**

*Systems Realignment Matrix - Updated 10-3-2023*

| | Item | JM<br>City Manager's System's Realignment Proposal | LM<br>Droste Response | LM<br>Council Feedback from Work Session | JM<br>Hahn Proposal | LM<br>Harrison Proposal | LM<br>2021 Council Feedback | JM<br>Droste BERIPE Plan | JM<br>Hahn/City Clerk Proposal to A & R |
|---|---|---|---|---|---|---|---|---|---|
| | Date | 4/26/2021 | 5/18/2021 | 5/18/2021 | 6/15/2021 | 6/15/2021 | 6/15/2021 | 3/14/2023 | 10/10/2023 |
| Item Summary | Decisions/ Actions Taken | Thesis: Councilmembers to return with thoughts/proposals | Thesis: Supports CM Proposal. Recommends template adjustments to increase effectiveness and clarify reason for proposal and its recomendations and increase effectiveness. | Thesis: Mayor proposed and Council approved continuing the item to the June 15, 2021 regular meeting to allow Councilmembers to submit written comments for the public record. | Thesis: Legislative process should support Council in passing legislation of important local concerns and value-based issues with impact locally and more broadly.<br>New legislation should be thoroughly reseached, revised and vetted with input from stakeholders, the public, City Staff and Council collegues.<br>City staff contribute with increased levels of input and participation as the legislation moves forward. | Thesis: Does not support CM Proposal.<br>Major items only put forward Jan - April to conincide with budget process limits public and Council voices.<br>Harrison's proposal operates continuously with deadlines for each step of review. | Thesis: Council recommendation was to review the proposal for systems alignment and provide edits and suggestions in order to compile Council feedback for the purpose of drafting a revised proposal for adoption. Sent back to A&R to prepare a new proposal<br><br>No Councilmembers commented on the Consent Item during the meeting. | | Thesis: Align with budget process, create consistency in process and proposal writing; ramp-up staff engagement as proposal moves through process. Create "seasons" (specific annual timeframes for development, policy committee, council and budget approval) |
| | Process for Council Items | A & R determines if Major Item<br>If not major, agendized for Council meeting | Council Agenda Item Template recommended adjustments:<br>- add: Define the Problem<br>-Include Criteria Considered &<br>-Rationale for Recommendatio<br>-Make Equity its own category<br>Sample red-lined template in item | Some Councilmembers expressed concern about the yearly April deadline for Major items because it would create stale items and/or limit ability to respond to the concerns of the moment. CM reminded public and Council that this process is just for the 15 -20 Major items drafted each year. | Guideline Format drives development of Council, City Manager or Commission proposals<br>All Major Items, regardless of where originated follow the prescribed process<br>Council is encouraged to consult with staff during proposal development but may wait until during the Committee process<br>CAO must provide preliminary review prior to initial submittal | Council Streamlines Existing Backlog of staff involved items through Policy Committees' review and recommendations to Council. | N/A | | Built around June Budget Adoption<br>Divided into Seasons with deadlines for each phase |
| | Major Item Definition | - Cannot be operationalized over time with existing resources<br>- Displaces an existing prioritzed item<br>- Not implementable with existing resources<br>- Unable to sustain enforcement activities<br>- Subject to legal challenge and/or pre-emption<br>- Additional/new FTE on a temporary or permanent basis<br>- Additional or new infrastructure or technology costs | | | Any law, program, or policy that represents a significant change or addition to existing law, program, or policy and/or is likely to call for or elicit significant study, analysis, or input from the community, staff or Council colleagues, and/or is likely to require significant new resources or staffing to implement. | | N/A | | Definition required |
| | Major Item Determination | A & R in consultation with CM<br>EXCEPTIONS:<br>- Grant deadlines<br>- Public Safety Issues<br>- Declared local emergencies<br>If exceptions granted, projects "in process" must be identified and delayed | Major Item Determination Checklist<br>recommended adjustments:<br>Define "smaller" and "less impactful" and state how that is determined. | | (see definition above)<br>Can originate from Coucilmembers, City Manager (often as referral responses) or Commissions<br>A & R makes determination if a submittal is a Major Item - can be sent back to originator for more information and compliance with Guildelines | Should be determined by Policy Committees, not Agenda Committee, via objective determination.<br>No determination criteria given. | N/A | N/A | Submittal Season: Year round submittal<br>September 30 cut off for consideration through process<br>Submittals reviewed by A & R for Major Item Determination and compliance with Guidelines |
| | Major Item Deadline | A & R agenda prior to April 30 to be considered in legislative year<br>Agendized at A & R on rolling basis | none provided | | none provided | 120 days maximum, which includes the Implementation Conference. | N/A | LIMITS NUMBER OF MAYOR ITEM SUBMITTALS<br>Councilmember limited to submitting 1 major legislative item or set of amendments to existing ordinances/yr<br>Mayor limited to submitting 2 major legislative items or set of amendments to existing ordinances/yr<br>DEADLINE TBD | September 30 for next fiscal year consideration |

*Systems Realignment Matrix - Updated 10-3-2023*

| | | JM | LM | LM | JM | LM | LM | JM | JM |
|---|---|---|---|---|---|---|---|---|---|
| | Item | City Manager's System's Realignment Proposal | Droste Response | Council Feedback from Work Session | Hahn Proposal | Harrison Proposal | 2021 Council Feedback | Droste BERIPE Plan | Hahn/City Clerk Proposal to A & R |
| | Date | 4/26/2021 | 5/18/2021 | 5/18/2021 | 6/15/2021 | 6/15/2021 | 6/15/2021 | 3/14/2023 | 10/10/2023 |
| Item Distinction/ Process | Policy Committee Review | Referred by A & R<br>Reviewed for completeness and alignment with Strategic Plan goals.<br>Commission review.<br>Once approved for consideration moves to Implementation Conference | Policy Committee Ranking Form<br>recommended adjustments:<br>-Use score rather than rank<br>NOTE:<br>CM presentation no longer recommends using the Ranking Form | See Implementation Conference | A & R makes determination if a proposal meets information in Guidelines prior to sending on to Committees - Author has right to appeal<br>Committees plan a timeline for hearing over multiple meetings and identify stakeholders and experts to provide input. Committee meetings to discuss proposal should be taken in order of the required components of the Guidelines<br>Staff agendized to engage in every discussion and provides budget resources needs for Launch and | Policy Committees send their recommendation and finalized Implementation report to A & R for scheduling at Council. | N/A | N/A | Committee Season: October 1 - March 1<br>A & R - October: will require special meetings. determines completeness based on Major Items Guildelines edits must be completed by 3rd Friday in October in order to move to Committees<br>Committees determine order of hearings, create calendar, group like items together, understand staffing impacts, follow Enhanced Review Process |
| | Implementation Conference | CM or designee, CAO, Department Head or designee<br>Collaborate with author to detail fiscal and operational impacts. Implementation Conference outcomes to be incorporated into Concil Report<br>(see detail in 4.26.21 proposal, p3) | Implementation Conference Worksheet<br>recommended adjustments:<br>-Reduce amount of redundant components and specify what impact means.<br>-Include similar additions as Council Item Template.<br>-See sample redlined template in the item | Timing for conference: Earlier timing, perhaps just after referred to policy committee, before the Committee takes it up.<br><br>Staff analysis: Former Auditor in her 2018 presentation talked about importance of Council needing a staff analysis, resource analysis and opportunity costs in their items. Councilmember noted incredible importance for Council to have this info before passing items. At the same time, don't want staff to spend too much time on an item that doesn't pass. Tension here.<br><br>Definitions: Council needs to be comfortable with them. | | The Policy Committee would facilitate an Implementation Conference hearing(s) with City staff, the author, and Committee members in order to prepare an Implementation Report. This happens during the Policy Committee Review. | N/A | N/A | N/A |
| | Implementation Conference Deadline | August 31 | No calendar deadline | | No calendar deadline | No calendar deadline.<br>Rolling basis. | N/A | N/A | N/A |
| | Initial Prioritization | July 31.<br>Policy Committees make recs Submitted to City Council | Sunset current RRV process<br>Committee to "score" each proposal | | | Prioritized on rolling basis.<br>Upon Council adoption, the budget aspect of the item would proceed to either the June or November budget process. | N/A | N/A | ONE TIME clearing of backlog on current list of projects |
| | Council Approval and Final Prioritization | October Council Calendar<br>Council approval, prioritization, assign fiscal year for implementation, identify removal of items that new initiatives will replace<br>If Council does not approve, item can be reintroduced the following year<br>November 30 deadline for all major item actions | Sunset current RRV process<br>Committee to "score" each proposal | | Author revises proposal to include required changes/clarifications and resources required for Launch and Implemention | Council approves before item goes through budget process. | N/A | Council prioritizes all new legislative submittals through RRV process.<br>Year 1 ONLY: Combine new legislative submittals and outstanding/incomplete items for prioritization through RRV process. Council and staff should determine what can be reasonably accomplished by staff based on RRV outcome and delete those projects that did not rise to top of priorities and cannot be accomplished.<br>Year 2 and ongoing: Only new legislative submittals will be prioritized | Council Season: Feb 1 - April 30<br>CAO must confirm compliance with Ordinances<br><br>Prioritization: Council and Committee prioritize and send to Budget Commitee |

*Systems Realignment Matrix - Updated 10-3-2023*

| Item | JM<br>City Manager's System's Realignment Proposal | LM<br>Droste Response | LM<br>Council Feedback from Work Session | JM<br>Hahn Proposal | LM<br>Harrison Proposal | LM<br>2021 Council Feedback | JM<br>Droste BERIPE Plan | JM<br>Hahn/City Clerk Proposal to A & R |
|---|---|---|---|---|---|---|---|---|
| Date | 4/26/2021 | 5/18/2021 | 5/18/2021 | 6/15/2021 | 6/15/2021 | 6/15/2021 | 3/14/2023 | 10/10/2023 |
| **Budget & Strategic Planning** | **December/January**<br>Staff to incorporate approved items into Budget/workplan ranked by priority<br>**January - March**<br>Council and Staff revise the budget based on department presentations to BC<br>**May/June**<br>Budget hearings, adjustments and adoption | | | Budget Implementation Conference:<br>approves moving toward implementation or implementation is declined to proceed | Council approved items go through the next budget process. | N/A | (see note above)<br>Budget referrals and allocations must be explicitly tied to previously established or approved policy program, planning/strategy document and/or external funding opportunity related to one of these.<br><br>No budget referral can directly fund a specific organization or event. Organizations recieving City funding must submit application that includes civic goals/purposes, previous funding history and quantitative/qualitative results/outcomes. Funding greater than $20,000 must include data on number of persons served and other outcomes. | Budget Season: May 1 - June 30<br>Council prioritization to Budget committee not binding. Budget Committee makes recommendations to full Council<br>Funded Council approved items move to Implementation<br>Unfunded Council approved items rollover to future funding opportunities |
| **Implementation** | | | | | | N/A | | July (Month 1 of new fiscal year)<br>Implementation Lead and Team assigned<br>Meeting with Authors for clarity, timelines, challenges<br>Implementation Team prepared Launch and Operational Plans |
| **Tools** | Council Item template outlining required information<br>Major Item checklist<br>Implementation Conference Worksheet | Major Item Determination Checklist | Policy Committee Ranking Form | Guildelines for Proposals/Council Items | Alternateive Systems Alignment Proposal flowchart. | N/A | | Major Items Guidelines Format<br>Enhanced Review Process |
| **Consolidated Yearly Cycle** | **Major Item Deadline:** April 30<br>**Implementation Conference Deadline:** August 31<br>**Council Prioritization Deadline:** July 31<br>**Council Approval Deadline:** November 30<br>**Budget Cycle:** January - | none addressed | N/A | none addressed | Rolling basis rather than yearly cycle. | N/A | Based on "to be established" deadline to align with RRV process | **Submittal Season:** Year round with August 1 deadline for next fiscal year consideration<br>**Committee Season:** Sept 1 - January 30 A & R and council committee review<br>**Coucil Season:** Feb 1 - April 30<br>**Budget Season:** May 1 - June 30 |
| Recomm **Consensus** | 1 - Staff input in legislative drafting is important | | | | | | | |
| **Variable Differences** | 1 - Different timelines for different types of items (some staggered, some ongoing) | | | | | | | |
| **Outstanding Questions** | 1 - What impact does this have on the RPP process? What needs to change? What limits revisions to a systems redesign process? | | | | | | | |

Office of the City Manager

# BACKGROUND MATERIAL

The following documents were previously submitted to the City Council for consideration, and are being provided with this item as background material.

The City Manager has removed staff's Systems Alignment Proposal from consideration. It is included in this attachment for reference and context.

Attachments:

March 14, 2023 Council Meeting
1. Bureaucratic Effectiveness and Referral Improvement and Prioritization Effort (BE RIPE)
    a. Report – Submitted by Councilmember Droste

June 15, 2021 Council Meeting
2. Systems Alignment Proposal
    a. Supplemental Material – Submitted by Councilmember Hahn
    b. Supplemental Material – Submitted by Councilmember Harrison
    c. Report – Submitted by City Manager

May 18, 2021 Council Meeting
3. Systems Alignment Proposal
    a. Supplemental Material – Submitted by Councilmember Droste
    b. Presentation – Submitted by City Manager
    c. Report – Submitted by City Manager

Lori Droste
Councilmember, District 8

Action Calendar
March 14, 2023

**To**: Honorable Mayor Jesse Arreguín and Members of the City Council

**From**: Councilmember Lori Droste

**Subject**: Bureaucratic Effectiveness and Referral Improvement and Prioritization Effort (BE RIPE)

## Recommendation

In order to ensure that the City focuses on high-priority issues, projects, and goals and affords them the resources and funding such civic efforts deserve, the City Council should consult with the City Manager's Office to develop and adopt a suite of revisions to the City Council Rules of Procedure and Order that would implement the following provisions:

1. Beginning in 2023, Councilmembers shall submit no more than one major legislative proposal or set of amendments to any existing ordinance per year, with the Mayor permitted to submit two major proposals, for a maximum of ten major Council items per year.
2. In 2023 and all future years, Councilmembers shall be required to submit major items before an established deadline. Council shall then prioritize any new legislative items as well as any incomplete major items from the previous year using the Reweighted Range Voting (RRV) process. This will help establish clear priorities for staff time, funding, and scheduling Council work sessions and meetings. For 2023 alone, the RRV process should include outstanding/incomplete Council items from all previous years. In 2024 and thereafter, the RRV process should only incorporate outstanding/incomplete major items from the prior year. However, Councilmembers may choose to renominate an incomplete major policy item from an earlier year as their single major item.
3. During deliberations at a special worksession, Council retreat, and/or departmental budget presentations, Council and the City Manager should develop a work plan that establishes reasonable expectations about what can be accomplished by staff given the list of priorities as ranked by RRV. Council should also consult with the City Manager and department heads, particularly the City Attorney's office, Planning Department, and Public Works Department on workload challenges (mandates outside Council priorities, etc.), impacts, reasonable staff output expectations, and potential corrective actions to ensure that mandated deadlines are met, basic services are provided, and policy proposals are effectively implemented.
4. Budget referrals and allocations from City Council must be explicitly related to a previously established or passed policy/program, planning/strategy document, and/or an external funding opportunity related to one of these. As a good government practice, councilmembers and the Mayor may **not** submit budget referrals which direct funds to a

specific organization or event. Organizations which receive City funding must submit at least annually an application detailing, at a minimum: the civic goal(s)/purpose(s) for which City funds are used, the amount of City funding received for each of the preceding five years, and quantitative or qualitative accounting of the results/outcomes for the projects that made use of those City funds. Organizations receiving more than $20,000 in City funds should be required to provide quantitative data regarding the number of individuals served and other outcomes.

5. Ensuring that any exceptions to these provisions are designed to ensure flexibility in the face of an emergency, disaster, or urgent legal issue/liability and narrowly tailored to be consistent with the goals of enhanced efficiency, effectiveness, fairness, and focus.

## Policy Committee Recommendation

On February 14, 2023, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Arreguin) to send the item to the City Council with a Qualified Positive Recommendation to refer the relevant concepts of the original item to the Agenda & Rules Committee for consideration under the existing committee agenda item regarding enhancements to the City's legislative process. Vote: All Ayes.

## Current Situation and Its Effects

Over the past few years (excluding the COVID-19 state of emergency), City Council has grappled with potential options to reduce the legislative workload on the City of Berkeley staff. While a significant portion of this workload is generated from non-legislative matters and staffing vacancies, it is important to recognize that staff also continue to struggle to keep up with Council directives while still accomplishing the City's core mission or providing high quality public infrastructure and services.

## Background and Rationale

Berkeley faces an enormous staffing crisis due in part to workload concerns; as such, Council should take steps to hone its focus on legislative priorities. November 2022's Public Works Off-Agenda Memo offers a benchmark for problems faced by City departments. Public Works staff struggles to complete its top strategic plan projects, respond to audit findings, and provide basic services, in addition to fulfilling legislative priorities by Council. While the "Top Goals and Priorities" outlined by Public Works is tied to 130+ directives by the City Council, it is not reasonable to assume that all will be implemented.

The challenges faced by the Public Works department are not an anomaly. Other departments share the same challenges. In addition to needing to ensure that the City can adopt a compliant state-mandated Housing Element, process permits, secure new grant funding, mitigate seismic risks, and advance our Climate Action Plan, Planning Department staff have been tasked with addressing multiple policy proposals from the City Council. The sheer number of referrals also impacts the ability of staff in the City Attorney's office to vet all ordinances, protect the City's interests, participate in litigation, and address the City's other various legal needs.

### *Best Practices*

A number of nearby, similarly-sized cities were contacted to request information about how these cities approach Councilmember referrals and prioritizations processes. Cities contacted

included Richmond, Vallejo, Santa Clara, Concord, and Sunnyvale. Of these cities, Santa Clara, Concord, and Sunnyvale replied.

**Santa Clara**
Overall, Santa Clara staff indicated that—similar to Berkeley—the Council referrals and prioritization process is not especially formalized, with additional referrals being made outside of the prioritization process.

Each year, the Council holds an annual priority setting session at which the Council examines and updates priorities from the previous year and considers what progress was made toward those priorities. The prioritization process takes place in February so that any priorities that rise to the top may be considered for funding ahead of the budget process. In any given year, some priorities may go unfunded and even holding those priorities over to a second year is not necessarily a guarantee of funding.

Despite conducting this annual prioritization exercise, Councilmembers in Santa Clara often still do bring forward additional referrals outside of this process. Part of this less restricted approach in Santa Clara's 030 ("zero thirty") policy, which allows members of the the City Council to add items to the Council agenda with sufficient notice and even allows members of the public to petition to have items added to a special section of the Council agenda.

Despite the overally looseness of Santa Clara's approach. Council members still rely upon staff to provide direction with respect to what priorities are or are not feasible based upon available funding and staff bandwidth.

**Concord**
According to Concord City staff, although Concord—like Berkeley and Santa Clara—does have a process for Councilmembers to request items be added to Council agendas, Councilmembers generally agree not to add referrals outside of the formal priority-setting process.

Concord City staff only work on "new" items/policies that are mandated by law, recommended by the City Manager, and have been recommended for review/work of some kind by a majority (three of the five members) of the City Council.

In general, Councilmembers agree to not add work items outside of the Council's formal priority setting process. The Concord City Council has a once-a-year goal setting workshop each spring where the City plans its Tier 1 and Tier 2 priorities for the year (or sometimes for a 2-year cycle). Most Councilmembers abide by this process and refrain from bringing forward additional items. However any Councilmember may put forward a referral outside of the process and use the method outlined below.

Outside of the prioritization process, Councilmembers can request that their colleagues (under Council reports at any Council meeting) support placing an item on a future Council meeting agenda for a discussion. The Concord City Attorney has advised councilmembers that they can make a three sentence statement, e.g. "I would like my colleagues' support to agendize [insert item]" or "to send [insert item] to a Council standing committee for discussion." Followed by: "This is an important item to me or a timely item for the Council because [insert reasoning]. Do I have your support?" The other Councilmembers then cannot engage in any detailed discussion or follow up, but may only vote yes or no to agendizing the item.

If two of the Councilmember's colleagues (for a total of 3 out of 5) agree to the request to have the item agendized for a more detailed discussion by Council, then the item will be added to a future agenda for fuller consideration. An additional referral outside the prioritization process is suggested perhaps once every month in Concord, but the Concord City Council usually does not provide the majority vote to agendize these additional items.

**Sunnyvale**

Of all the cities surveyed, Sunnyvale has the most structured approach for selecting, rating, and focusing on City Council priorities. "Study issues" require support from multiple councilmembers before being included in the annual priority setting, and then must go through a relatively rigorous process to rise to the top as Council priorities. And, perhaps most importantly, policy changes *must* go through the priority setting process to be considered. The Sunnyvale City Council's Policy 7.3.26 Study Issues reads, in part:

> *Any substantive policy change (large or relatively small) is subject to the study issues process (i.e. evaluated for ranking at the Council Study Issues Workshop).*
>
> *Policy related issues include such items as proposed ordinances, new or expanded service delivery programs, changes to existing Council policy, and/or amendments to the General Plan. Exceptions to this approach include emergency issues, and urgent policy issues that must be completed in the short term to avoid serious negative consequences to the City, subject to a majority vote of Council.*

If a study issue receives the support of at least two Councilmembers, the issue will go to staff for the preparation of a study issue paper. Council-generated study issues must be submitted to staff at least three weeks ahead of the priority-setting session, with an exception for study issues raised by the public and carried by at least two Councilmembers, if the study issues hearing takes place less than three weeks before the priority setting.

At the Annual Study Issues Workshop, the Council votes whether to rank, defer, or drop study issues. If a majority votes to drop the issue, it may not return the following year; if the issue is deferred, it returns at the following year's workshop; and if a majority votes to rank an issue, it proceeds to the ranking process. Sunnyvale's process uses "forced ranking" for "departments" with ten or fewer issues and "choice ranking" for departments with eleven or more issues. (The meaning of "departments" and the process for determining the number of issues per department are not elucidated within the policy.) Forced ranking involves assigning a ranking to every policy within a given subset, while choice ranking only assigns a ranking to a third of policies within a given subset, with the others going unranked.

After the Council determines which study issues will be moving forward for the year based on the rankings, the City Manager advises Council of staff's capacity for completing ranked issues. However, if the Council provides additional funding, the number of study issues addressed may be increased.

In 2022, Sunnyvale had 24 study issues (including 17 from previous years and only 7 new ones) and **zero** budget proposals. Although Sunnyvale does consider urgency items outside the prioritization process, this generally happens only 1 to 3 times per year and usually pertains to highly urgent items, such as gun violence.

**Status Quo and Its Effects**
Council currently uses a reweighted range proportional representation voting method to determine which priorities represent both a) a consensus and b) district/neighborhood concerns. This process allows Council to coalesce around a particular common area of concern; but if there is a specific neighborhood or district issue that is not addressed by Council consensus, it also allows for that district's councilmember's top priority to be elevated in the ratings even without broad consensus, so long as there are not multiple items designated as that councilmember's "top" item. More information about this process can be found here. This system was established in 2016 due to the sheer amount of referrals by Council and the lack of cohesive direction on which of the 100+ referrals the City Manager should act upon.

Subsequent to this effort, Council created a "short-term referral" pool which was intended to be light-lift referrals that could be accomplished in less than 90 days. However, that designation was always intended to be determined by the City Manager, not Council, with respect to what was operationally feasible in terms of the 90 day window. The challenge with Council determining what is a short-term referral is that it is not always realistic given other duties that the staff has to attend to and inappropriate determinations can stymy work on other long term priorities if staff have to drop everything they are doing to attend to an "short-term" or "emergency" referral.

An added challenge is that the City Auditor reported in 2018 that the City of Berkeley's Code Enforcement Unit (CEU) had insufficient capacity to enforce various Municipal Code provisions. This was due to multiple factors, including understaffing—some of which have since improved. Nevertheless, the City Auditor wrote,

> *"Council passes some ordinances without fully analyzing the resources needed for enforcement and without understanding current staffing capacity. In order to enforce new ordinances, the CEU must take time away from other enforcement areas. This increases the risk of significant health and safety code violations going unaddressed. It also leads to disgruntled community members who believe that the City is failing to meet its obligations. This does not suggest that the new ordinances are not of value and needed. Council passes policy to address community concerns. However, it does mean that the City Council routinely approves policy that may never result in the intended change or protections."*

Subsequent to that report, an update was published in September of 2022. A staffing and resource analysis for Code Enforcement is still needed to ensure that the laws Council passes can be implemented.

**Fiscal Impacts**
These reforms are likely to result in significant direct savings related to reduced staff time/overtime as well as potential decreases to costs associated with the recruitment/retention of staff.

**Alternatives Considered**
Alternatives were considered using effectiveness and efficiency as the evaluative criteria for referrals. One missing criterion that will be necessary in developing this process will be operational considerations so the City of Berkeley can continue to deliver basic services in an efficient manner.

*All-Council determination*
Council could vote *as a body* on the top 10 legislative priorities. The drawback of this method is that it, by default, eliminates any remaining priorities that have been passed by Council. It also eliminates "minority" voices which may disproportionately impact neighborhood-specific concerns as the remainder of the Council may not value district-specific concerns outside of their council district.

*Councilmember parameters*
Councilmembers could select their top two legislative priorities (as a primary author) for the year and the Mayor could select four legislative priorities for the year for a total of 10 legislative priorities per year. These "legislative priorities" would not include resolutions of support, budget referrals for infrastructure or traffic mitigations or other non-substantive policy items…..

*Status Quo Sans Short-Term Referrals*
The status quo of rating referrals is the fairest and most equitable if Council wishes to continue to pass the same quantity of referrals; however, it does not address the overall volume and that certain legislative items skip the prioritization queue due to popularity or perceived community support. Council enacts ordinances that fall outside of the priority setting process and designates items as short-term referrals. This loophole has made this process a bit more challenging. One potential option is to continue the prioritization process but eliminate the short-term referral option unless it is undeniably and categorically an emergency or time-sensitive issue.

**Contact Person**
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**Attachments**
Update on Public Works' Goals, Projects, Measures, and Challenges

Office of the City Manager

November 15, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Re: Update on Public Works' Goals, Projects, Measures, and Challenges

This memo shares an update on the department's *Performance Measures* and *FY 2023 Top Goals and Projects*, and identifies the department's highest priority challenge. I am proud of this department's work, its efforts to align its work with City Council's goals, and the department's dedication to improving project and program delivery.

*Performance Measures*
The department's performance measures were first placed on the department's website (https://berkeleyca.gov/your-government/about-us/departments/public-works) in 2020. They are updated annually in April. Progress continues in preventing trash from reaching the Bay, reducing waste, increasing bike lane miles, reducing the City fleet's reliance on gas, increasing City-owned electric chargers, expanding acres treated by green infrastructure, and reducing the sidewalk repair backlog. Challenges remain with the City's street condition and safety.

*Top Goals and Projects*
Public Works' top goals and projects are also on the department's website (https://berkeleyca.gov/your-government/about-us/departments/public-works). Department goals are developed annually. This year, after reviewing the 130+ directives from open City Council referrals, FY 2023 adopted budget referrals, audit findings, and strategic plan projects, staff matched existing resources with City Council's direction and the ability to deliver on this direction while ensuring continuity in baseline services.

The *FY 2023 Top Goals and Projects* is staff's projection of the work that the department has the capacity to advance this fiscal year. This list is intended to be both realistic and a stretch to achieve. More than tthree-quartersof the work on the *FY 2023 Top Goals and Projects* is tied to the existing 130+ directives from City Council referrals, budget referrals, audit findings, and strategic plan projects. The remainder are initiatives internal to the department aimed at increasing effectiveness and/or improving baseline services.

Public Works conducts quarterly monitoring of progress on the goals and projects, and status updates are shared on the department's website using a simple status reporting

procedure. Each goal or project is coded green, yellow, or red. A project coded green is either already completed or is on track and on budget. A project in yellow is at risk of being off track or over budget. A project in red either will not meet its milestone for this fiscal year or is significantly off track or off-budget. Where a project or goal has multiple sub-parts, an overall status is color-coded for the numbered goal and/or project, and exceptions within the subparts are identified by color-coding. Quarter 1's status update is here. The 2nd, 3rd, and 4th quarter results will be posted at the same location.

*Challenge*
Besides the volume of direction, the most significant challenge in delivering on City Council's directions is the department's high vacancy rate. The Public Works Department is responsible for staff retention and serves as the hiring manager in the recruitment and selection process. Both retention and hiring contribute to the department's vacancy rate, and the department collaborates closely with the Human Resources Department to reduce the rate. Over the last year, the vacancy rate has ranged from 12% to 18%, and some divisions, such as Equipment Maintenance (Fleet), Transportation,[1] and Engineering, have exceeded 20%. While the overall vacancy rate is lower than in Oakland and San Francisco, it is higher than in Public Works Departments in Alameda, Albany, Emeryville, and San Leandro.

The high vacancy rate obviously reduces the number of services and projects that staff can deliver. It leaves little room for new direction through the course of the fiscal year and can lead to delays and diminished quality. It also detracts from staff morale as existing staff are left to juggle multiple job responsibilities over long periods with little relief. The department's last two annual staff surveys show that employee morale is in the lowest quarter of comparable public agencies and the vacancy rate is a key driver of morale.

Attachment 1 offers an excerpted list of programs and projects that the department is unable to complete or address in this fiscal year due to the elevated vacancy rate and/or the volume of directives.

Attachment 1: Selected list of program, project, referral, and audit finding impacts

cc: Paul Buddenhagen, Deputy City Manager
LaTanya Bellow, Deputy City Manager
Jenny Wong, City Auditor
Mark Numainville, City Clerk
Matthai Chakko, Assistant to the City Manager

[1] Three of the City's five transportation planner positions will be vacant by December 3. Before January 1, 2023, the City Manager will share an off agenda memo that explains the impact of transportation-specific vacancies on existing projects and programs.

## Attachment 1: Selected list of program, project, referral, and audit finding impacts

*Project and Program Impacts*

- Major infrastructure planning processes are 6+ months behind schedule, including comprehensive planning related to the City's Zero Waste goal, bicycle, stormwater/watershed, sewer, and streetlight infrastructure.
- Some flashing beacon installations have been delayed for more than 18 months, new traffic maintenance requests can take 2+ months to resolve, and the backlog of neighborhood traffic calming requests stretches to 2019.
- The City may lose its accreditation status by the American Public Works Association because of a lack of capacity to gain re-accreditation.
- Some regular inspections and enforcement of traffic control plans for the City's and others' work in the right of way are missed.
- Residents experience missed waste and compost pickups as drivers and workers cover unfamiliar routes and temporary assignments.
- Illegal dumping, ongoing encampment, and RV-related cleanups are sometimes missed or delayed.
- The backlog of parking citation appeals has increased.
- Invoice and contracting approvals can face months-long delays.
- The Janitorial Unit has reduced service levels and increased complaints.
- Maintenance of the City's fleet has declined, with preventative maintenance happening infrequently, longer repair response times, and key vehicles being unavailable during significant weather events.

*Prior Direction Deferred or Delayed*

- Referral: Expansion of Paid Parking (DMND0003994)
- Referral: Long-Term Zero Waste Strategy (DMND0001282)
- Referral: Residential Permit Parking (PRJ0016358)
- Referral: Parking Benefits District at Marina (DMND0003997)
- Referral: Prioritizing pedestrians at intersections (DMND0002584)
- Referral: Parking Districts on Lorin and Gilman (DMND0003998)
- Budget Referral: Durant/Telegraph Plaza, 12/14/2021
- Referral: Traffic Calming Policy Revision (PRJ0012444)
- Referral: Public Realm Pedestrianization Opportunities (PRJ0019832)
- Referral: Long-Term Resurfacing Plan (PRJ0033877)
- Referral: Street Sweeping Improvement Plan (DMND0002583)
- Audit: Leases: Conflicting Directives Hinder Contract Oversight (2009)
- Audit: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal (2014)
- Audit: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity (2016)

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# SUPPLEMENTAL AGENDA MATERIAL

## for Supplemental Packet 2

**Meeting Date:** **June 15, 2021**

**Item Number:** **3**

**Item Description:** **Systems Alignment Proposal**

**Submitted by:** **Councilmember Sophie Hahn**

This Supplemental offers suggestions for a legislative process better aligned with the goal of creating and supporting meaningful and effective change. Our current system is strengthened by (1) supporting the completeness of Major Items as introduced by Authors by requiring adherence to the existing Guildelines, and (2) significantly strengthening the Committee process - to support robust analysis and community/stakeholder consultation and ensure items moving forward to Council include realistic estimates of resources required related to launch and implement new programs and policies.

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CONSENT CALENDAR
June 15, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Sophie Hahn (Author)
Subject: Systems Alignment Proposal

## COMMENTS ON SYSTEMS REALIGNMENT

**My Frame for Systems Realignment: *Systems Aligned to Support Change***

We are in a time of rapid change both locally and globally. The impacts of climate change, globalization, and inequality; growing threats to democracy; and the rise of a new generation of leaders illustrate that change is both a fact and an imperative.

Berkeley has been and should continue to be on the cutting edge of that change, and our legislative processes as well as our City organization must be designed to do more than just manage the status quo, with change viewed as a threat, cost, or nuisance. *Our systems must be aligned to stimulate, support, and implement meaningful change across all sectors - quickly.*

With that framing in mind, I believe the legislative process in Berkeley should be designed to support Councilmembers and the Mayor in producing and passing legislation that addresses important local concerns as well as value-based issues with both local and broader impact. Some legislation may simply strengthen the City of Berkeley as an organization - improving the basic functions and services we provide to our community. Other legislation is designed to address city, community, regional, national, and sometimes global needs, values and priorities.

Because of the City's commitment to progressive and democratic principles and its role as a leader and innovator across many sectors, legislation will often push the envelope, which I believe requires a nimble, can-do City organization. While logistics, staffing, costs and other elements of feasibility and implementation are key to the ultimate success of any new policy or program, I view the exploration of these questions as a supporting rather than driving force for legislation; internal feasibility under the status quo should not be an end unto itself.

**Systems Aligned to Support Excellence and Effectiveness in Change:**
While I believe change is an imperative and innovation should be core to our City systems, I also know that not every idea brought forward is ultimately optimal, relevant, or feasible. We are much more than an incubator for ideas and concepts - we serve a real community and must balance a wide variety of needs and viewpoints with every decision we make. I believe our systems must therefore be aligned to ensure new programs and policies are thoroughly researched, revised, and vetted for Berkeley - to meet the needs of our community without overwhelming the City organization. If the Council has priorities for which funds or capacity are not currently available, we must identify resources to build capacity.

To achieve these goals in this frame, I envision a process wherein major items of legislation that begin with the well-researched and articulated proposals of one or a few councilmember/mayor-authors are progressively reviewed and improved with input from stakeholders, members of the public, City staff and Council colleagues.

The end result should be high quality, relevant, thoughtfully tailored and right-sized programs and policies accompanied by realistic assessments of the resources required for successful launch and implementation. City staff, with their subject matter expertise and knowledge of operations play a uniquely important role in contributing to legislative success, and should actively partner throughout the process, *with progressively increased levels of input and participation as legislation is moved forward.*

The adoption of Guidelines for legislative items and the implementation of the Committee system provide a good foundation.  By clarifying expectations and improving the value we derive from our existing processes we can avoid bogging things down with too many steps.

The following are my suggestions for a legislative process better aligned with the goal of creating and supporting meaningful and effective change. Our current system is strengthened by (1) supporting the completeness of Major Items as introduced by Authors by requiring adherence to the existing Guildelines, and (2) significantly strengthening the Committee process - to support robust analysis and community/stakeholder consultation and ensure items moving forward to Council include realistic estimates of resources required related to launch and implement new programs and policies.

**Proposed Systems Alignment Improvements for Major Items:**

| PROCESS ELEMENT | CONTENT | NOTES |
|---|---|---|
| **MAJOR ITEM SUBMISSION** | ***Strongly encourage Authors to present Major Items in the full Guidelines format, which prompts for deep research, analysis and consultation*** | |
| **Define Major Item** | Any law, program, or policy that represents a significant change or addition to existing law, program, or policy, and/or is likely to call for or elicit significant study, analysis, or input from the community, staff, or Council colleagues, and/or is likely to require significant new resources or staffing to implement . | Major items are, essentially, "Policy Committee Track" items (see Rules) that are routed to a Policy Committee because they are substantial. *The adoption of a definition for Major Items clarifies a practice that is already in place*.<br><br>Some items are not "Major" because they propose less significant changes or additions to existing law, programs or policies. In addition, some Major Items may be routed directly to the City Council due to urgency ("Time Critical Track"). *All of this is already reflected in the Rules governing Policy Committees.* |
| **Major Item Routing** | Major items may originate with Councilmembers, the City Manager (often as referral responses), or Commissions. Major Items generally should be routed to a Committee to be reviewed by Committee members and, if necessary, revised, with input from stakeholders, the public, and City staff. | Currently, only Councilmember/Mayor items are subject to review by Policy Committees. *The Rules should be amended to require all Major Items, regardless of where they originated, to be reviewed in Committee* unless they fall under the Time Critical Track or another exception. |
| Make **Guidelines Mandatory** for presentation of Major Items for review | Council/Mayor and Commission authors of Major Items should present their items in accordance with the Guidelines at Appendix B of the City Council Rules of Procedure and Order. Authors should make a good faith effort to undertake the research, analysis and consultation necessary to complete all sections in substance. | Need to specify format for "non-Major" items. |
| **Staff Consultation is encouraged, but not required** at the initial | Councilmembers and the Mayor are encouraged to consult with Staff before presenting Major Items, but may choose to engage with staff later, through the Committee process. | Staff should keep confidential and seek to support the positive development of ideas and initiatives of electeds who reach out for initial |

| | | |
|---|---|---|
| development of a legislative item. | | input. Concerns, if any, should be addressed with a problem-solving lens. |
| **City Attorney Consultation** | Authors should submit Major Items for preliminary review by the City Attorney to determine if there are any legal implications - which may need to be addressed before the item is submitted or could be developed/addressed later. The author should state in the section on consultation that the City Attorney has been consulted. | Not all items have legal implications. The City Attorney's role at this juncture would be to identify whether there are legal considerations, or not. If there are, the Author can work with the City Attorney's office to determine if the issues can be avoided/addressed, or if the legislation may not be possible/advisable. |
| **Agenda Committee makes an initial determination** of whether an Item is "Major" and will be referred to a Committee, with input from the Author(s). | *This tracks the current practice* - except that with an adopted definition of a Major Item the determination to send an item to Committee will be made according to more clearly articulated, objective standards. | Per the existing rules, proclamations, sponsorships, ceremonial and similar items; Time Critical Items; and "Policy Track" items that are complete and have minimal impacts are currently *not* referred to Committees. *This practice will be unchanged.* |
| The Agenda Committee may **require a Major Item not presented and/or fully rendered according to the Guidelines to be more amply developed** before being sent to Committee. | Authors of Major Items should do substantial research, analysis, and consultation before sending them to a Committee for further input and development.<br><br>The Agenda Committee should be authorized to request that a major item not presented according to the Guidelines, or not substantially meeting the requirements, be further developed by the Author(s) before being sent to Committee. | Analysis should go beyond diagnosing the problem to be solved and focus on explaining and understanding the specific solutions/policies/programs being proposed, as well as alternatives considered. |
| **Appeal/Override** of Agenda Committee recommendation to revise Major Item before submission to a Committee | Authors should be offered the opportunity to discuss an Agenda Committee recommendation to rework a Major Item at the time the recommendation is made. If, after discussion, the lead author disagrees with the Agenda Committee's request for further elaboration according to the Guidelines, the item may be referred to a Committee "as is" with a note that the Agenda Committee had requested the item be revised. | Authors should have a means to appeal a decision of the Agenda Committee to send an item back to the author for revision/expanded research, analysis or consultation and still move their items forward if they disagree with the request. |
| **Major Items that are Complete** go to Committee (or items that are incomplete but subject to an override) | *Per existing rules*, Major Items will be routed to a policy committee unless an exception applies. | Exceptions are already listed in the Rules. |

| MAJOR ITEM COMMITTEE REVIEW | ***Clarify and significantly improve process and substance of Major Item review @ Committee, including development of a preliminary launch and implementation plan and associated costs*** | |
|---|---|---|
| **Committee hears Major Item more than once -** First hearing includes development of a plan for review | As a general matter, Committees should plan to schedule Major Items to be heard more than once. At the first hearing, the Committee should discuss the level of analysis and consultation envisioned, identify specific stakeholders and questions Commitee members would like to explore, and sketch a process for moving the item forward over several Committee meetings. | Depending on how complex and significant the Major Item appears to be, the Committee can plan out its process of review and consultation. |
| **Committee reviews specific elements** of the proposed Major Item | The Guidelines require, under bullets 5-9, (5) full background on the problem/issue to be addressed, (6) the existing regulatory/legal framework, (7) potential alternative solutions to address the identified concern, (8) consultation with stakeholders, and (9) a rationale for the recommendation.<br><br>Each of these sections should be specifically agendized for discussion (can all be same day, but should be individually considered) to ensure robust consideration of the legislation as proposed. | By requiring the Committee to focus on each of these elements as a baseline review, Committee members are encouraged to do a deep dive into the basis, rationales and alternatives for the Major Item. |
| **Committee identifies and does specific outreach to Stakeholders and Experts** | The “public” is always welcome at Committee Meetings. In addition to general public notice, the Committee in its first meeting to review a Major Item should identify stakeholders and experts who may have valuable input. If needed, those individuals/groups should be invited by the Committee to share their perspectives.<br><br>Staff can support outreach to ensure identified stakeholders and experts are aware of the opportunity to comment. | Sectors/individuals that are supported or otherwise impacted by new policies and programs are well positioned to provide useful comments and input for the Committee. Subject matter experts may also be helpful to hear from. |
| **Staff input is agendized and includes preliminary review of Launch and Implementation** | Staff is encouraged to provide input and answer questions throughout the Committee process. Staff should be encouraged to volunteer comments and Committee Chairs should call on staff to ensure time is provided for their comments throughout the process. *In addition, a specific time for staff input should be agendized.*<br><br>The Staff presentation should include *preliminary review of staffing and budget/resource needs for both Launch and Implementation.* | Launching a new program or policy and running it are two different undertakings. Staff should specify what will need to be in place to LAUNCH (development of regulations, preparation of informational mailings, website updates, back-end systems, funding, etc. ) and to RUN/IMPLEMENT new programs and policies over the long run. |

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|---|---|---|
| Manage/reduce **Staffing of Committees** | With a better articulated “plan” for Committee review of Major Items, staffing of meetings can be more closely managed to reduce waiting time for staff members/City Attorney when not needed for one or another matter. | Only need Clerk + Staff Lead - Chair can work with Staff Lead to bring other Staff into discussions on as-needed basis. The City Attorney may be able to be on standby for advice when presence is not required. |
| Major Item moves forward to Council (all recommendations) | Lead Author must revise/update item to include information about resources required for Launch and Implementation of the Major Item, and to reflect any other changes, before submission to City Council. | |
| Major Item gets **passed by Council** | Goes to Budget Implementation Conference, or vote no and it’s over | |

Kate Harrison
Councilmember District 4

# REVISED AGENDA MATERIAL
# for Supplemental Packet 2

**Meeting Date:** **June 15, 2021**

**Item Number:** **3**

**Item Description:** **Systems Alignment Proposal**

**Submitted by:** **Councilmember Harrison**

The attached item includes Councilmember Harrison's comments about the proposed Systems Alignment Proposal as well as an alternative proposal.

It is in the public interest that the Council consider this alternative proposal as part of the Mayor's development of a revised proposal for discussion and adoption at a later date.

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Kate Harrison
Councilmember District 4

CONSENT CALENDAR
June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Comments and Alternative Systems Alignment Proposal

## COMMENTS AND ALTERNATIVE PROPOSAL

At the October 2019 Council retreat, the Council and the City Manager discussed various approaches to better align the legislative process to budget and implementation resources. These considerations are important and merit Council consideration and possible action. However, the proposed solution from the City Manager would also limit the voice of the public and the Council by restricting the time period for Council referrals to only four months per year.

At a Worksession on May 18, 2021 dedicated to the Systems Alignment proposal, the Council heard overwhelming public comment strongly opposed to such an approach.

A better solution lies in reexamining and modifying certain elements of the Policy Committee process as opposed to overhauling fundamental elements of Council duties.

This Supplemental discusses the shortcomings of the proposal in greater detail and advances an alternative and simpler approach to “Systems Alignment” achieving the original objective of the October 2019 retreat without sacrificing and abdicating fundamental values and responsibilities.

### A. The Proposed Systems Alignment Proposal Unduly Limits Council Duties and Responsibilities Under the City Charter

The City Charter provides that the City Council is the “governing body of the municipality” and “shall exercise the corporate powers of the City, and… be vested with all powers of legislation in municipal affairs adequate to a complete system of local government.”

However, the proposal subjects “new significant legislation” to a labyrinth of new bureaucratic processes that will invariably and unduly limit the democratic organ of city government—the City Council—which is directly answerable to the will of the people.

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The following list provides a non-comprehensive overview/discussion of the ways the current Systems Alignment Proposal could violate the letter and spirit of the Charter:

- The proposal limits Council from submitting "new significant legislation" to four months out of the year, effectively making the Council only responsive to the people's "significant" needs on a part-time basis as any legislation that misses the deadline is inactive for the remainder of the year. Not only does this violate the necessity of providing the Council with "all powers of legislation in municipal affairs," but it appears to contradict the voter's will pursuant to Measure JJ, wherein they reaffirmed the scope and appropriate renumeration of Council's myriad legislative and oversight responsibilities.

- The determination of which legislation will be subject to additional scrutiny and processes is based on *subjective* findings by the Agenda Committee in consultation with the City Manager. This is in contrast to alternative approaches, such as those adopted in other cities, which rely upon *objective* measures such as the consideration of a piece of legislation's budgetary or staffing implications informed by thorough discussion and investigation by Policy Committees. Furthermore, pursuant to the Council's historic rules of procedures, *subjective judgements* of legislation are appropriately the purview of the Council as a whole, not subcommittees. The current proposal adopts an inherently conservative and subjective framework that judges all legislation by whether it "represents a significant change or addition to existing law, program, or policy, or is likely to call for or elicit significant study, analysis, or input from staff." Legislation meeting that definition is then subjected to lengthy bureaucratic processes of more than a year.

  In short, the proposed framework stands in contrast to the current Policy Committee system, whereby subcommittees are tasked with improving the quality, thoroughness and comprehension of legislation, as opposed to a subjective consideration and determination of whether a given policy change is merited largely within the narrow confines of considering limited budget and staff resources.

- Under the Charter, the Council is responsible for adopting a biannual budget. However, the proposal limits Council's ability to adopt significant new legislation with budget implications at only one of the two primary budget processes per year.

- Legislative consultation with City staff is absolutely necessary. But the proposal encourages authors to "initially consult[] with the City Manager or city staff regarding their proposed Major Item and [note] the substance of those conversations, and initial staff input" before the item is even introduced. This system could potentially create an inappropriate layer of staff power over Council legislative prerogative, a division that the Charter is very clear about.

- The proposal requires that items align with Strategic Plan goals. While these goals are important and represent a snapshot of Council and City Staff's vision for the city, they do not necessarily represent the totality of the people's will as expressed

through their elected representatives at any given time.

- The Council is artificially constrained from acting upon legislation receiving an unfavorable review at the Policy Committee level. Council is reduced to a choice between proceeding through the next phase, or to vetoing a matter for the remainder of the legislative calendar if a policy committee forwards a negative recommendation. Currently, under the committee system, items not acted upon in committee withing 120 days are forwarded to the Council. In this way, the proposal violates the Charter by imposing unreasonable hurdles to the exercise of "all powers of legislation in municipal affairs adequate to a complete system of local government."

- The proposal states that all significant legislation must be submitted by April 30, and City Council Policy Committees must complete review of all Major Items assigned to them no later than June 30 of each year. This raises the question of what the Council is engaged in for the majority of the year?

- Implementation Conferences, while a good idea, are currently crafted in a way that they will delay items unnecessarily and remove discussion of budgetary impacts from the substantive discussion by policy committees. Furthermore, the proposal imposes an artificial limit with respect to holding Implementation Conferences to once per year, which will further constrain the Council's legislative obligations.

- After the implementation conference, Policy Committees are required to provide an additional subjective consideration of major items through prioritization. This is late in the life of an item. Additionally, under this proposal, the Council is expected to once again rank significant items as part of the RRV process (behind closed doors), despite the items having already endured the lengthy Systems Alignment process and final Council approval.

- When an item fails to receive Council approval, the author is barred from resubmitting it until the following year.

## B. Alternative Systems Alignment Proposal

This item presents a simpler and less disruptive Systems Alignment proposal that conforms to the existing Council and Policy Committee processes and prioritizes research and investigation of items with significant budgetary and staff implications in order to better inform Council's decision-making process as opposed to hard limits on legislation:

1. To address the backlog of outstanding items that may impact staff resources and availability to implement Council and other citywide priorities, the Council should immediately direct Policy Committees to review all such referrals and items in staff's queue for which implementation work has not yet begun.

Upon this review, Policy Committees would be tasked with making a recommendation to the full Council to modify or reconsider certain items in the queue.

Next, the Council should schedule worksessions (outside of the RRV process) to consider Policy Committee recommendations in a public forum and prepare a Resolution potentially dispensing with and/or reprioritizing items in the queue.

In totality, this process would contribute to streamlining the existing queue, and facilitate staff resources for implementation and development of other new and existing legislative items. In sum, through revisiting the existing queue, Council can continue to conduct substantial legislative work throughout the year.

2. The Council should revise Policy Committee process with respect to the budget and legislative implementation.

   Specifically, to address potential incongruity between Council items with significant budget implications, the Council should modify its Rules of Procedure to task Policy Committees (not the Agenda Committee) with making an initial and objective determination of whether a prospective item has significant budget and/or staffing impacts (**See Attachment 1** for a detailed flowchart of the Alternative Proposal):

   - Upon an insignificant budget determination, the item and any related budget referral would proceed through the normal Policy Committee track process on a maximum 90-day timeline.

   - Upon a significant determination, the item would be placed on a different Policy Committee track such that the Policy Committee would have a maximum of 120 days to research and investigate the budget and staffing implications of the item, any related budget referral, and policy implications, in order to *inform* Council's ultimate consideration. As part of the 120 day process, the Committee would facilitate an Implementation Conference hearing(s) with City staff, the author, and Committee members in order to prepare an Implementation Report.

   - Once the Committee has made its policy recommendation and finalized its Implementation Report, the item would proceed to the Agenda Committee for scheduling at Council.

   - Upon Council adoption of items with either significant or insignificant budget/staffing implications, the budget aspect of the item would proceed to either the June or November budget process pursuant to Council-established deadlines for consideration of budget items. For example, the

Council could establish deadlines of May and October for the respective budget processes. Therefore, the Budget Committee would only consider budget items that were passed ahead of the respective deadlines. Those that miss the deadline or are ultimately unfunded would be automatically carried over to the next budget process.

This alternative proposal would achieve the important goal of aligning Council items with significant budget and staff impacts with legislation in an objective way that is not detrimental to the Council's obligations under the Charter.

It is in the public interest that the Council consider this alternative proposal as part of the Mayor's development of a revised proposal for discussion and adoption at a later date.

CONTACT
Councilmember Kate Harrison
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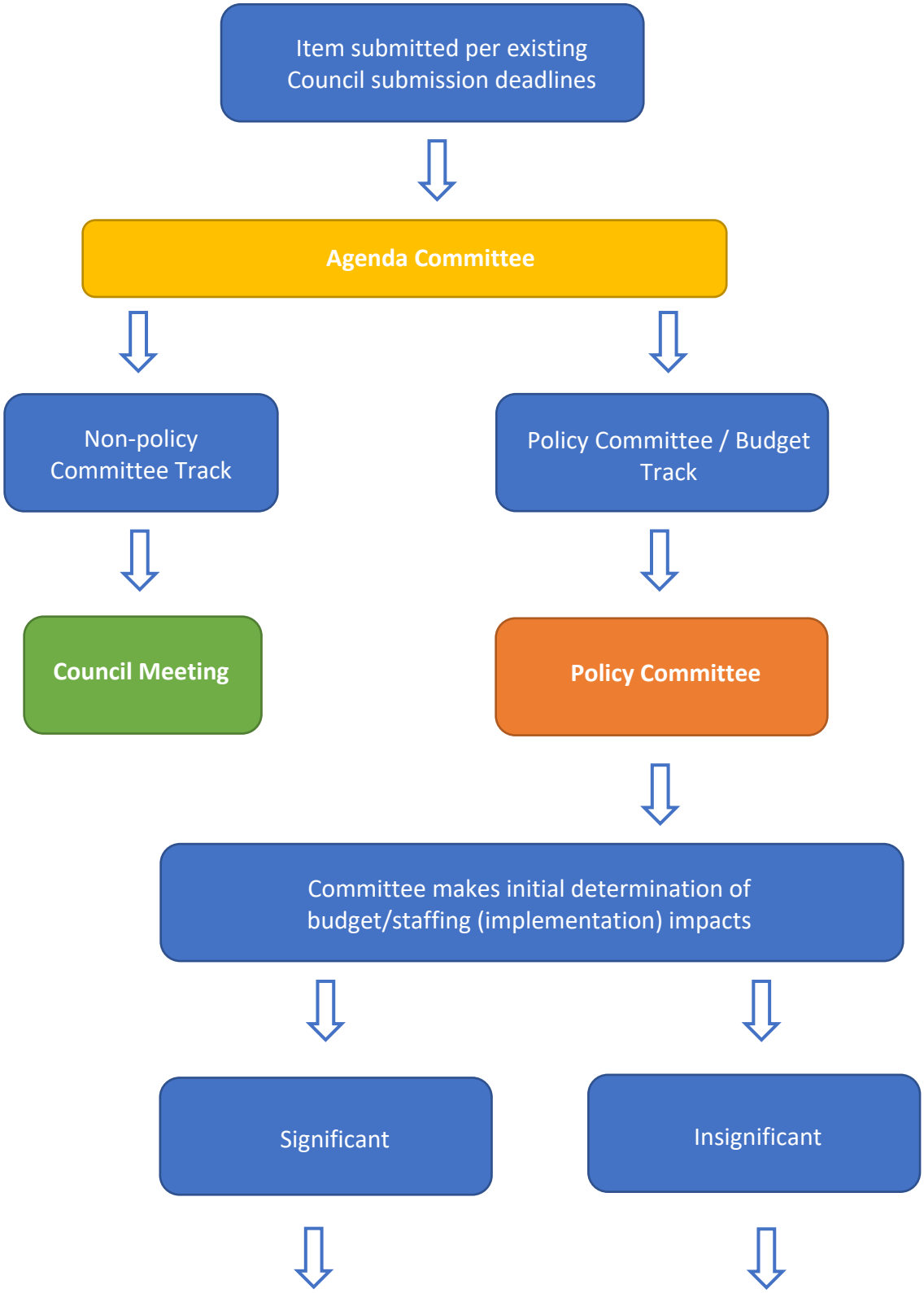
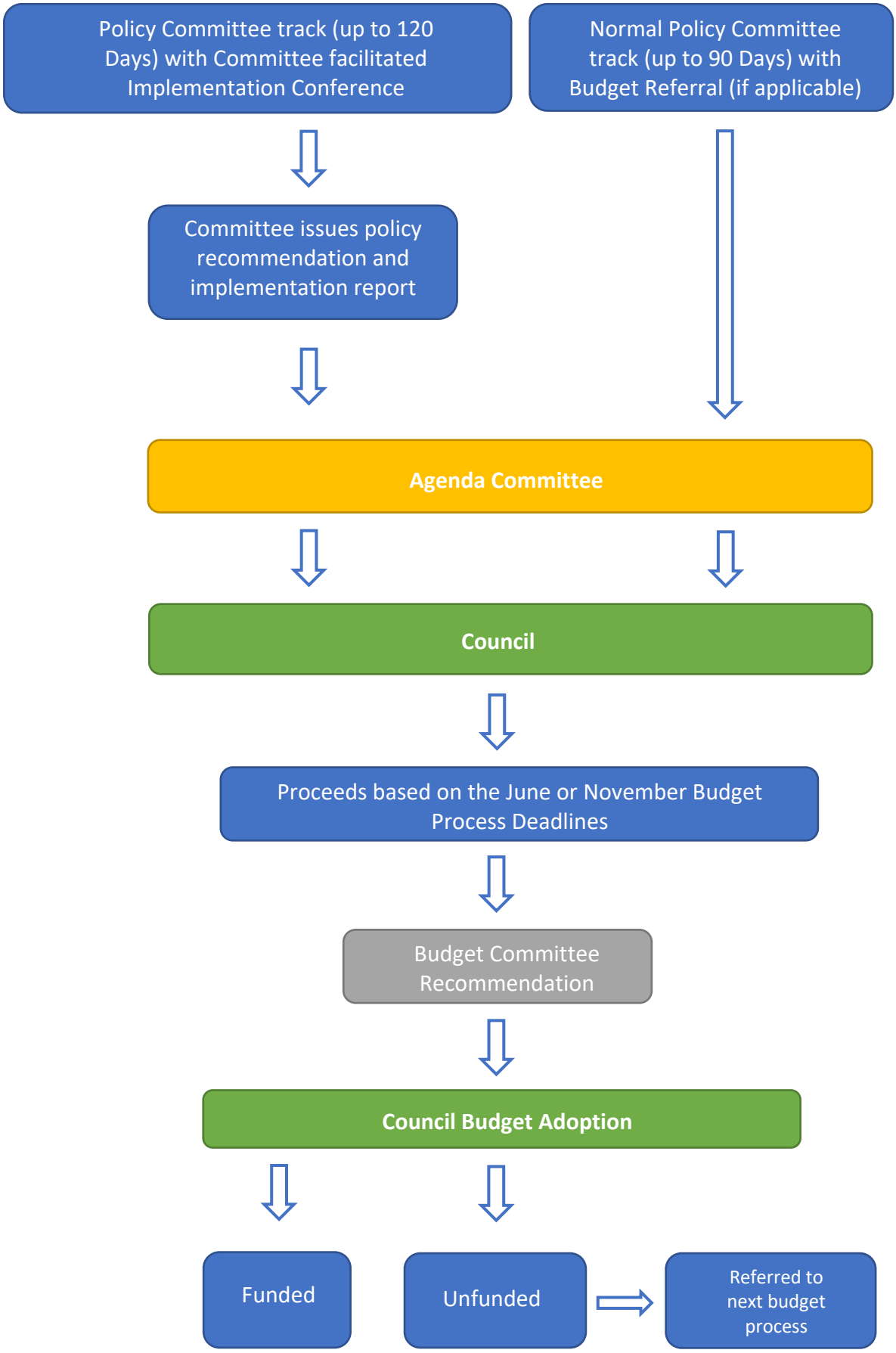
ATTACHMENTS:
1. Flowchart of Alternative Systems Alignment Proposal

## Alternative Systems Alignment Proposal




Policy Committee track (up to 120 Days) with Committee facilitated Implementation Conference
Normal Policy Committee track (up to 90 Days) with Budget Referral (if applicable)
Committee issues policy recommendation and implementation report
Agenda Committee
Council
Proceeds based on the June or November Budget Process Deadlines
Budget Committee Recommendation
Council Budget Adoption
Funded
Unfunded
Referred to next budget process

Office of the City Manager

CONSENT CALENDAR
June 15, 2021
*(continued from May 18, 2021)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David White, Deputy City Manager

Subject: Systems Alignment Proposal

## RECOMMENDATION
Review the proposal for systems alignment and provide edits and suggestions in order to compile Council feedback for the purpose of drafting a revised proposal for adoption.

## SUMMARY
The City Council discussed the Systems Alignment proposal at a Worksession on May 18, 2021. The item was continued to June 15 to allow Councilmembers to submit suggestions and changes to the original plan. The Mayor will consolidate the input from the Council and the public and return with a revised proposal for discussion and adoption at a later date.

## FISCAL IMPACTS OF RECOMMENDATION
While the recommendation of this report would not entail fiscal impacts, if adopted, the proposal would have budgetary effects. Broadly speaking, the proposal is designed to better ensure adequate financial and staffing resources are identified and approved with any adopted significant legislation[1] (Major Item).

## CURRENT SITUATION AND ITS EFFECTS
This report proposes a process to integrate various systems (e.g., budget, Strategic Plan, prioritization of referrals, etc.) to ensure that resources are appropriately allocated, to focus the organization and employees on those priorities established by the City Council and City Manager, and to enhance legislative and budget processes. Ultimately, aligning systems will help ensure our community's values as reflected in the policies of our City Council are implemented completely and efficiently, with increased fiscal prudence, while supporting more meaningful service delivery. In light of the economic and financial impacts of COVID-19 and resource constraints, it is imperative to improve

[1] New significant legislation is defined, with some explicit exceptions, as "any law, program, or policy that represents a significant change or addition to existing law, program, or policy, or is likely to call for or elicit significant study, analysis, or input from staff, Councilmembers or members of the public". See Council Rules of Procedure, https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure.pdf.

vetting and costing of new projects and legislative initiatives to ensure success. In addition, the purpose of this proposal will align our work with the budget process.

The proposed changes outlined in this memorandum will better guide and inform budget development, clarify tradeoffs by identifying operational impacts, and develop a more effective and time-efficient path to implementation. These changes support a clear and full realizing of City Council policies, programs, and vision. The major features of the proposal are:

- Changing the order of the legislative process to ensure that Major Items (defined below) passed by Council are funded, as well as folded into staff workplans and staffing capacity,
- Making the City Council Rules of Procedure Appendix B guidelines mandatory,
- Ensuring that Major Items that are adopted by City Council are vetted and clearly identify the resources needed for implementation,
- Consolidating and simplifying reporting and tracking of Major Items, and
- Creating a deadline for each year's Major Items that allows for alignment with prioritization, the Strategic Plan, and the budget process.

Additionally, the proposed Systems Alignment would advance the City's Strategic Plan goal to provide an efficient and financially-health City government.

## PROPOSED PROCESS

The proposed process outlined in this memorandum replaces the current system of referrals (short and long term, as well as Commission referrals), directives, and new proposed ordinances, that is, all Major Items, regardless of "type" or origin will be subject to this process.

### Step 1: Major Item Determination

The systems alignment proposal outlines a process for Major Items.

#### *Defined in Council Rules of Procedure*

Major Items are "new significant legislation" as defined in Appendix D of the City Council Rules of Procedure:

> Except as provided below, "new significant legislation" is defined as any law, program, or policy that represents a significant change or addition to existing law, program, or policy, or is likely to call for or elicit significant study, analysis, or input from staff, Councilmembers or members of the public.

The exceptions to the definition of new significant legislation and process state:

> New significant legislation originating from the Council, Commissions, or Staff related to the City's COVID-19 response[2], including but not limited to health and

[2] If this proposal is adopted, "COVID-19" should be replaced with "declared emergency response" in the exception language.

economic impacts of the pandemic or recovery, or addressing other health and safety concerns, the City Budget process, or other essential or ongoing City processes or business will be allowed to move forward, as well as legislative items that are urgent, time sensitive, smaller, or less impactful.

The Agenda & Rules Committee, in consultation with the City Manager, will make the initial determination of whether something is a Major Item, using the Major Item Determination Checklist (see attachment 1). At any time in the process, if evidence demonstrates that the initial determination of the proposal as a Major Item proves incorrect, then it is no longer subject to this process. Additionally, if any legislation it originally deemed not to be a Major Item, the author or City Manager may appeal to the Agenda and Rules Committee or to the full Council and present evidence to the contrary.

***Required Conformance and Consultation***
All Major Items must use the agenda guidelines in Appendix B of the Council Rules, which require more detailed background information and analysis. The Agenda and Rules Committee can send the item back to the author if it is not complete and/or does not include all of the information required in Appendix B. The author must make a good faith effort to ensure all the guideline prompts are completed in substance not just in form.

Major Items must include a section noting whether the author has initially consulted with the City Manager or city staff regarding their proposed Major Item and the substance of those conversations, and initial staff input.

***Required Submission Date***
A Major Item must be submitted in time to appear on the agenda of an Agenda & Rules Committee meeting occurring no later than April 30 of every year. Any item submitted after that deadline, that does not meet an exemption, will be continued to the following year's legislative process.

Major Items will be referred by the Agenda & Rules committee on a rolling basis.

**Step 2: Policy Committee Review**
A Major Item, once introduced and deemed complete and in conformance by the Agenda and Rules Committee, will be referred to one of City Council's Policy Committees (i.e., Health, Life Enrichment, Equity and Community, Public Safety, etc.), for review, recommendation, and high-level discussion of implementation (i.e., ideas, rough cost estimates, benefits, etc.). Per the *Council Rules of Procedure*,[3] the Policy

[3] https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure%20-%20Feb%2011%202020%20-%20FINAL.pdf

Committee will review the Major Item and the completed Major Item Determination Checklist to confirm Agenda & Rules initial determination that the Major Item is complete in accordance with Section III.B.2 and aligns with Strategic Plan goals. If the Major Item receives a positive or qualified positive recommendation, then it will go to an Implementation Conference (See step 3, Vetting and Costing).

If the Major Item receives a negative or qualified negative recommendation, then it will be returned to the Agenda and Rules Committee to be placed on a City Council Agenda. When heard at a City Council meeting, the author can advocate for the Major Item to be sent to an Implementation Conference. If the Major Item does not receive a vote by the majority of City Council at this step, it becomes inactive for that year's legislative calendar but may be reintroduced for the next year's calendar.

City Council Policy Committees must complete review of all Major Items assigned to them no later than June 30 of each year.

**Step 3: Implementation Conference (Vetting and Costing)**
At an Implementation Conference, the primary author will meet with the City Manager or designee, City Manager-selected staff subject matter experts, and the City Attorney or designee.

***Identifying Fiscal, Operational and Implementation Impacts***
The intended outcome of an Implementation Conference is a strong analysis containing all of the considerations and resources necessary to support implementation should Council choose to approve the Major Item.

The Implementation Conference is an informal meeting where the primary author can collaborate with the City Manager, City Attorney, and staff to better define the Major Item and identify more detailed fiscal and operational impacts, as well as implementation considerations. The information discussed during the Implementation Conference will be summarized in the Council Report as part of newly required sections (see attachment 2), in conformance with Appendix B:

- *Initial Consultation*, which
    - Lists internal and external stakeholders that were consulted, including whether item was concurrently submitted to a Commission for input,
    - Summarizes and confirms what was learned from consultation,
    - Confirms legal review addressing any legal or pre-emption issues, ensuring legal form,[4]
- *Implementation, Administration, and Enforcement*, which
    - Identifies internal and external benefits and impacts, and

[4] While consultation with the City Attorney is mentioned in Appendix B, the legal review and "confirmations" recommended in this proposal is a more specific and robust requirement.

    - Considers equity implications, launch/initiation of Major Item and its ongoing administration, and
- *Fiscal & Operational Impacts*, which
    - Summarizes any operational impacts,
    - Identifies necessary resources, including specific staff resources needed and costs.[5]

As part of the Implementation Conference, staff will provide a high level work plan, indicating major deliverables/milestones and dates. This information can be collected and recorded using the Implementation Conference Worksheet (see attachment 2).

Implementation Conferences will be date certain meetings held in July.

***Revising the Major Item***

After the Major Item's author revises the original Council Report based on information from the Implementation Conference, the Major Item will be submitted to the Council agenda process. If additional full time equivalent employee(s) (FTE) or fiscal resources are needed, the Major Item must include a referral to the budget process and identify the amount for implementation of the policy or program.

**Step 4: Initial Prioritization**

At their first meetings in September, Policy Committees must complete the ranking of the Major Items which were referred to them and also completed the Implementation Conference. The Policy Committees will provide these rankings in the form of a recommendation to the City Council. The Policy Committees prioritization will use the Policy Committee Ranking Form (see attachment 3) to standardize consideration of Major Items across Policy Committees. The Policy Committee priority rankings will be submitted to the City Council when the Council is considering items to move forward in the budget and Strategic Plan process.

**Step 5: City Council Approval and Final Prioritization**

Under this proposal, all Major Items that the City Council considers for approved prioritization must have:

1. Received a City Council Policy Committee review and recommendation,
2. Received a City Council Policy Committee prioritization,
3. Completed the Implementation Conference, and
4. Been placed on the Agenda for a regular of special Council meeting in October for approval and inclusion in the RRV process.

[5] Appendix B does require a Fiscal Impacts section, but the inclusion of operational impacts and specific noting of required staff resources and costs recommended in this proposal is a more specific and robust requirement.

At the designated Council meeting in October, staff will provide the Council with a list of all approved Major Items, including the initial prioritization by Policy Committee. The Council will consider each Major Item for approval. All approved Major Items then will be added to the RRV process (i.e., with other items, referrals, etc) and ranked. The RRV ranking will begin in late October. These rankings will be adopted by Council and used to inform the development of the draft budget. Approved and ranked Major Items have multiple opportunities to be approved for funding, when the biennial budget or mid-cycle budget is adopted in June or when the Annual Appropriations Ordinances are adopted in May and November.

If a Major Item *does not receive the endorsement* of City Council at this step, it becomes inactive for that year's legislative calendar and may be reintroduced for the next year's calendar.

City Council must complete its Major Items approval, and RRV process no later than the final meeting in December of each year.[6] This ensures that staff is able to develop the budget starting from and based on Council priorities.

***Step 6: Budget & Strategic Plan Process***

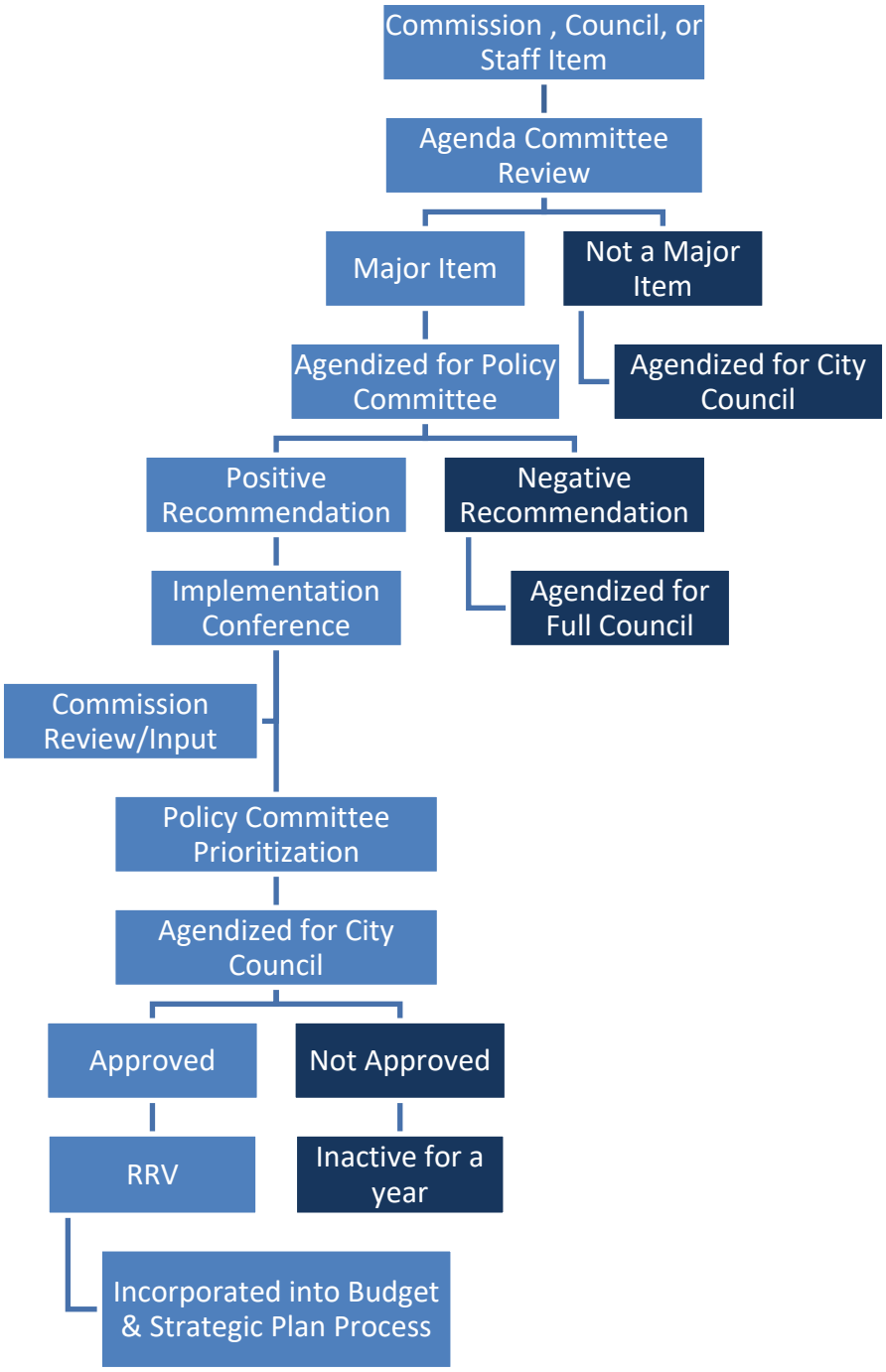
The Council's rankings are also forwarded to the Budget and Finance Committee for consideration as part of budget development. If the proposal is not ultimately funded in the biennial budget, mid-cycle budget or the Annual Appropriations Ordinance (mid-year budget amendment), then it does not move forward that year and will be added to a list of unfunded proposals for the future budget process.

During December and January, city staff will prepare budget proposals that incorporate the ranked City Council Major Items, Strategic Plan, and work plan development. In the late winter/early spring, the City Manager and Budget Office will present the draft budget to Council. This will be followed by department presentations to the Budget and Finance Policy Committee. From late March and through early May, Council and staff will refine the budget. Council will hold budget hearings in May and June, with adoption of the budget by June 30. Although the legislative process (i.e., Policy Committee review, Implementation Conference, Prioritization) is annual, staff recommends the budget process remain biennual. A significant mid-cycle budget update can easily accommodate additions to or changes in priorities arising through the legislative process.

The proposed process is depicted in Figure 1 and the proposed launch calendar in Figure 2.

[6] Due to noticing requirements, an RRV process completed by November 30 may not appear on a City Council Agenda for adoption until January.

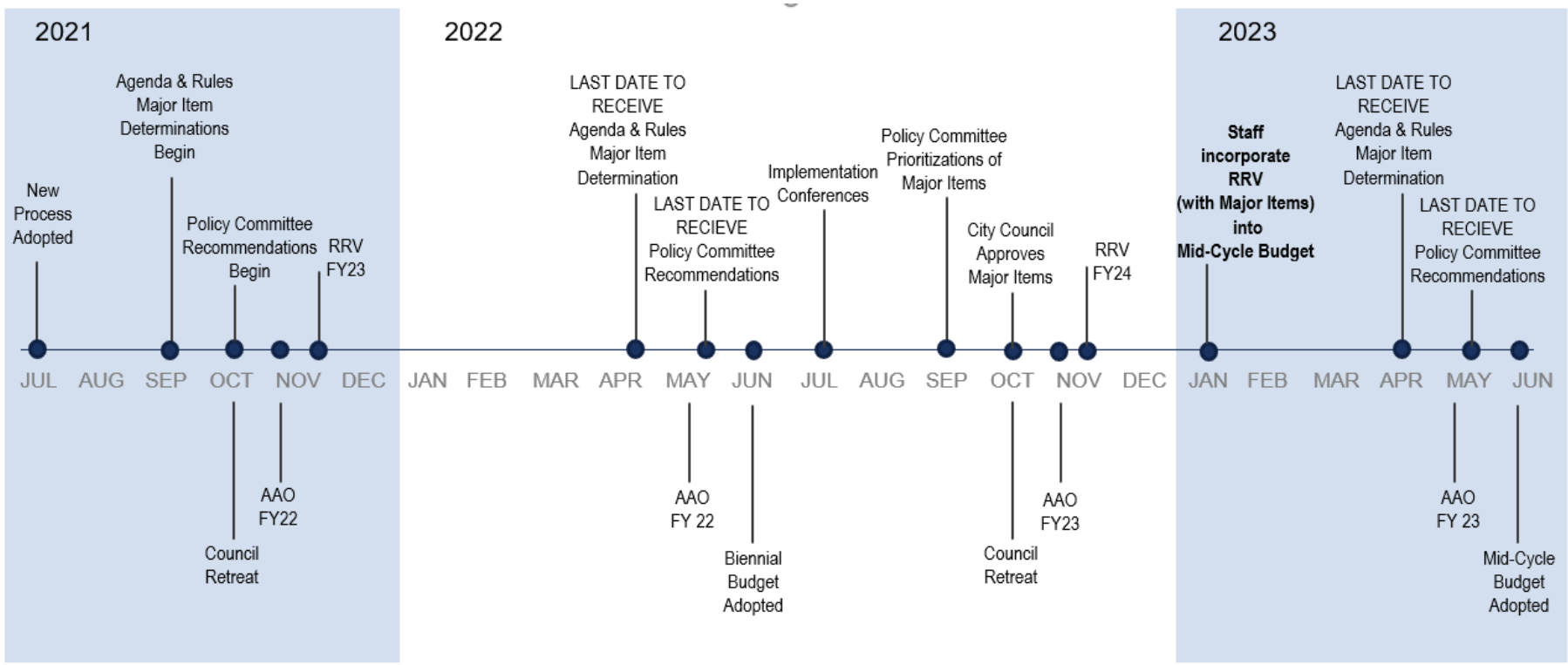
*Figure 1, Proposed Process*[7]




[7] Major Items that are ordinances will need to be examined on a case-by-case basis. Once adopted, ranked, and, if requiring resources, budgeted, the ordinance will need to be given an effective date and scheduled for first and second readings at Council.

Office of the City Manager

*Figure 2, Proposed Launch*



Office of the City Manager

**Next Steps**
Staff will reach out to legislative aides for input and the City Manager will meet individually with Councilmembers to discuss this proposal. Staff will incorporate Council input from the worksession, and from subsequent input< into a resolution and return to Council with a final Systems Alignment item for adoption by July 2021.

**Benefits**
The addition of an Implementation Conference will ensure that Major Items considered by Council are properly resourced, improving our City's responsible management of fiscal resources. Analysis from the Implementation Conference will help Council to balance and consider each Major Item within the context of related programs and potential impacts (positive and negative). When considered holistically, new policy implementation can be supportive of existing work and service delivery.

Since the proposed process places the City Council prioritization of Major Items immediately before budget preparation, the Prioritization will guide and inform budget development, including components such as the Strategic Plan and work plans. Fixing the sequencing of the process is a key benefit. Currently, with prioritization occurring in May and June, the budget process is nearing completion when City Council's priorities are finally decided. This leads to inconsistencies between adopted priorities and budgeting for those priorities.

Under the current process, an idea may go into prioritization, proceed to the short term referral list or referred to the budget process. However, the resulting Major Item may not have addressed operational considerations. Adding such items to a department's work at any given time of the year may lead to staff stopping or slowing work on other prioritized projects in order to develop and implement new Major Items. Also, it may be difficult for staff to prioritize their projects: is stopping/slowing of work that is already underway in order to address new items the preference of the full Council?

Also, because consideration of implementation currently occurs after the adoption of a Major Item, features of the adopted language may unintentionally constrain effective implementation, complicating and slowing progress on the Major Item and hindering the effectiveness of the new program or regulation.

With the proposed process, a Major Item does not go through prioritization until there is an opportunity for staff to identify operational considerations. Finally, since implementation only occurs after operational considerations are reported, and funds are

allocated, the resulting Major Item should move more quickly from idea to successful completion.

BACKGROUND
In October 2019, City Council held a half-day worksession to discuss systems realignment and provide direction on potential changes to the city's legislative process. The purpose of the meeting was to develop recommendations for how various systems (e.g., budget, Strategic Plan, RRV, etc) could better work together to ensure that the organization is able to focus on the priorities established by the City Council. The City Manager took direction from that meeting and worked with department directors and the Budget Office to create this proposal.

ENVIRONMENTAL SUSTAINABILITY
By improving efficiency, ensuring adequate resources, and strengthening implementation, this proposal would increase the speed and full adoption of new significant legislation, including sustainability work.

RATIONALE FOR RECOMMENDATION
The City of Berkeley is unique in comparison to many cities. It considers and approves many more policies, often at the cutting edge, than a typical city and especially for a city of its size. This proposal is a hybrid, incorporating city processes while mirroring State and Federal legislative processes which accommodate a larger number of policies and items in a given cycle. The disadvantage of this proposal is that it introduces additional steps, such as the implementation conference. The advantages of this proposal, are:

- Ensuring adopted legislation is adequately resourced, in terms of both staffing and budget;
- Providing adequate context for Council to balance and consider items in relation to potential positive and negative impacts; and
- Strengthening the effectiveness and efficiency of policy implementation.

ALTERNATIVE ACTIONS CONSIDERED
At the Council retreat in October 2019, a variety of approaches and ideas were discussed and considered. Additionally, the original version of this proposal was substantively revised through the Policy Committee process.

If the Council takes no action on this item, the existing process will continue to result in inadequately resourced adopted legislation and inefficient and complicated implementation.

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

Attachments:
1: Major Item Determination Checklist
2: Council Report Template and Implementation Conference Worksheet
3: Policy Committee Ranking Form
4: Vice Mayor Droste Supplemental

# Major Item Determination Checklist

**Item Name:**

**Item Author:**

**Is this a Major Item?**

| Yes | No | |
|---|---|---|
| ☐ | ☐ | Item represents a significant change to existing law, program, or policy. |
| ☐ | ☐ | Item represents a significant addition to existing law, program, or policy. |
| ☐ | ☐ | Item is likely to call for or elicit significant study, analysis or input from staff, Councilmembers, or members of the public |

**Is this eligible for an Exemption?**

| Yes | No | |
|---|---|---|
| ☐ | ☐ | Item is related the City's COVID-19 response. |
| ☐ | ☐ | Item is related to the City Budget process. |
| ☐ | ☐ | Item is related to essential or ongoing City processes or business. |
| ☐ | ☐ | Item is urgent. |
| ☐ | ☐ | Item is time-sensitive. |
| ☐ | ☐ | Item is smaller. |
| ☐ | ☐ | Item is less impactful. |

**Agenda Committee Determination:**

☐ Major Item ☐ Exempted

Indicate name and date below.

Per Committee Member_____

Per Committee Member_____

Per Committee Member_____

**Policy Committee Confirmation:**

☐ Determination Confirmed ☐ Sent back to be agendized for full Council consideration

Indicate name and date below.

Per Committee Member_____

Per Committee Member_____

Per Committee Member_____

DRAFT

[First Lastname]
Councilmember District [District No.]

[CONSENT *OR* ACTION]
CALENDAR
[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council

From: [Councilmember (lastname)]

Subject: [Brief Report Title (No underline and not all caps.)]

## RECOMMENDATION

Adopt a Resolution…
or Support …
or write a letter to ___ in support of _____…
or other recommendation….

## ~~FINANCIAL~~ FISCAL & OPERATIONAL IMPACTS ~~IMPLICATIONS~~

*This section must include operational impacts, identify any staff resources (full time exempt employee/FTE) required, and financial costs.*

## IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

*This section must describe benefits and impacts to both internal and external stakeholders. It should also consider equity; the launch or initiation of the item; and its ongoing administration once implemented.*

## CURRENT SITUATION AND ITS EFFECTS

*For items that relate to one of the Strategic Plan goals, include a standard sentence in the Current Situation and Effects or Background section:*
[Insert project name] is a Strategic Plan Priority Project, advancing our goal to [pick one:]

- provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.
- provide an efficient and financially-health City government.
- foster a dynamic, sustainable, and locally-based economy.
- create affordable housing and housing support service for our most vulnerable community members.
- create a resilient, safe, connected, and prepared city.
- champion and demonstrate social and racial equity.
- be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

DRAFT

- be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.
- attract and retain a talented and diverse City government workforce.

## BACKGROUND

## INITIAL CONSULTATION

*This section should list the external and internal stakeholders, indicate whether the item was submitted to a commission for input, and summarize what was learned from consulting with stakeholders.*

## ENVIRONMENTAL SUSTAINABILITY

## CONTACT PERSON

Councilmember [First Lastname] Council District [District No.] 510-981-[XXXX]

Attachments: [Delete if there are NO Attachments]
1: Resolution
Exhibit A: [Title or Description of Exhibit]
Exhibit B: [Title or Description of Exhibit]
2: [Title or Description of Attachment]
3: [Title or Description of Attachment]

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

SHORT TITLE OF RESOLUTION HERE

WHEREAS, (Whereas' are necessary when an explanation or legislative history is required); and

WHEREAS, (Insert Additional 'Whereas Clauses' as needed); and

WHEREAS, enter text here; and

WHEREAS, enter text here; and

WHEREAS, (The last "Whereas" paragraph should contain a period (.) .

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that (Action to be taken) - ends in a period (.).

BE IT FURTHER RESOLVED that (for further action if needed; if not delete) - ends in a period (.).

Exhibits **[Delete if there are NO exhibits]**
A: Title of the Exhibit
B: Title of the Exhibit

# Implementation Conference Worksheet

**Item Name:**

**Item Author:**

**AUTHOR SECTION**

The author of the item may complete this section to help record required information for the report.

| |
|---|
| Descriptive title: |
| Is this for Consent, Action, or Information Calendar? |
| Recommendation: |
| Summary statement: |
| Background (history, circumstances and concerns to be addressed by the item): |
| Plans, programs, policies and/or laws were taken into consideration: |
| Actions/alternatives considered: |
| Internal stakeholders consulted: |
| Name/date of Commission(s) item submitted to for input: |
| List of external stakeholders consulted: |

DRAFT

| |
|---|
| Summary of what was learned from consulting stakeholders: |
| Rationale for recommendation: |
| Internal Benefits of Implementation: |
| Internal Impacts of Implementation: |
| External Benefits of Implementation: |
| External Impacts of Implementation: |
| Equity Considerations: |
| Launch and Implementation Milestones (see staff section) |
| Environmental Impacts: |
| Operational Impacts: |
| Staff Resources Needed:<br><br>Number of FTE/hours:<br>Type of staff resource needed: |
| Costs:<br><br>Amount(s):<br>Funding Source: |

DRAFT

**STAFF SECTION**

Staff may complete section to provide required information for the report.

| Estimated Launch/implementation Deliverables/Dates: | |
|---|---|
| *Month/Year* | *Deliverable* |
| Estimated Administration Deliverables/Dates: | |
| *Month/Year* | *Deliverable* |

**Legal Consultation**:

☐ Confirmed

Name/Date _____

**Staff Consultation**:

☐ Confirmed

Name(s)/Date(s) _____

DRAFT

# Policy Committee Ranking Form

Starting on the right, think about and then indicate whether each consideration is high (H), medium (M) or low (L). Then rank the list of priorities. The highest priority would be "1", the next highest "2" and so on.

| **Priority** 1 is highest | **Major Item Name** | **Major Item Author** | **Considerations** H high M medium L low | | |
|---|---|---|---|---|---|
| | | | **Staff Resources** | **Cost** | **Benefits/ Savings** |
| | | | | | |
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**Policy Committee Determination**:

Indicate name and date below.

Per Committee Member_____

Per Committee Member_____

Per Committee Member_____

DRAFT

Lori Droste
Vice Mayor District 8

# SUPPLEMENTAL AGENDA MATERIAL
# for Supplemental Packet 3

**Meeting Date:** May 18, 2021

**Item Number:** 2

**Item Description:** Systems Realignment

**Submitted by:** Vice Mayor Lori Droste

**Subject:** Comments on Systems Realignment

Lori Droste
Vice Mayor District 8

To: Mayor and Council
From: Vice Mayor Lori Droste
Subject: Comments on the Systems Realignment

P. 13- what is “smaller” and “less impactful” and how is that determined?

P. 14- the council item template should include a problem definition and frontload the evidence (background, consultation, review) and include criteria considered. Strategic plan alignment, fiscal and operational impacts, environmental sustainability can be embedded under this heading. I would also argue that “Benefit” or “Effectiveness” should be included in Criteria Considered. Also, equity and administrative feasibility are separate criteria to be considered. Council is not involved in enforcement so I recommend that it be eliminated. Furthermore, as currently written the Current Situation and Its Effects describes the Strategic Plan goals and not the status quo situation.

General Template Outline:

1) Recommendation
2) Problem Statement
3) Background and Consultation
4) Current Situation and Its Effects
5) Criteria Considered (*new heading*)
    a) Benefit or Effectiveness (*new*)
    b) Fiscal Considerations
    c) Strategic Plan Alignment (pick a goal)
    d) Environmental Sustainability
    e) Equity
    f) Operational and Administrative Considerations *(moved operational considerations to a separate category)*
6) Rationale for Recommendation (*new)*

P. 15 Implementation Conference Worksheet
I recommend reducing the amount of redundant components in the implementation conference worksheet and specifying what “impact” means. Does it mean benefit? Does it mean tradeoff? In either case, I believe it is covered by other elements of this worksheet.

P. 19- There is no description of *how* policy committee members' rankings will be aggregated. Furthermore, the "ranking" is orthogonal and could be completely contradictory to the staffing, benefit, and costs. Scoring legislative items instead of ranking them will allow for easier prioritization. A cardinal voting system like this is more expressive, accurate and easier to understand. It also lessens vote splitting.

[CONSENT OR ACTION] CALENDAR [Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council From: [Councilmember (lastname)]

Subject: [Brief Report Title (No underline and not all caps.)]

RECOMMENDATION Adopt a Resolution… or Support … or write a letter to ___ in support of _____… or other recommendation….

**PROBLEM STATEMENT**

**This section should identify the problem with specifics and enough context to explain why it merits public amelioriation.**

*(Background and Evidence Should be Provided At the Beginning)*

BACKGROUND **AND** INITIAL CONSULTATION This section should list the external and internal stakeholders, indicate whether the item was submitted to a commission for input, and summarize what was learned from consulting with stakeholders.

**CURRENT SITUATION AND ITS EFFECTS**

This section should explain the status quo and how it attempts to address the defined problem.

**CRITERIA CONSIDERED**

- FINANCIAL FISCAL & OPERATIONAL IMPACTS IMPLICATIONS This section must include operational impacts, identify any staff resources (full time exempt employee/FTE) required, and financial costs.

~~IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT This section must describe benefits and impacts to both internal and external stakeholders. It should also consider equity; the launch or initiation of the item; and its ongoing administration once implemented.~~ *Equity should be a standalone category separate from administrative feasibility. Rename this section Operational and Administrative Considerations*

- ~~CURRENT SITUATION AND ITS EFFECTS For items that relate to one of the Strategic Plan goals, include a standard sentence in the Current Situation and Effects or Background section: [Insert project name] is a~~ Strategic Plan **Alignment**~~Priority Project~~, advancing our goal to [pick one:]
    - provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.
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    - attract and retain a talented and diverse City government workforce.
- ENVIRONMENTAL SUSTAINABILITY

**RATIONALE FOR RECOMMENDATION**

This section should describe how the author landed on the recommendation using the criteria considered. This section can also describe other alternatives considered.

CONTACT PERSON
Councilmember [First Last Name] Council District [District No.] 510-981-[XXXX]
Attachments: [Delete if there are NO Attachments]
1: Resolution Exhibit A: [Title or Description of Exhibit] Exhibit B: [Title or Description of Exhibit]
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3: [Title or Description of Attachment]

Implementation Conference Worksheet

| |
|---|
| Descriptive Title |
| Consent Action or Information |
| Recommendation |
| **Problem** Statement |
| Background, etc |
| Plans, etc. |
| **Current Situation and Its Effects** |
| Actions/Alternatives Considered |
| **Stakeholders Consultation and Results** |
| ~~Internal Stakeholders Consulted~~ |
| ~~Name/date of Commission(s) item submitted to for input~~ |
| ~~List of external stakeholders consulted~~ |
| ~~Summary of what was learned from consulting stakeholders~~ |
| ~~Rationale for Recommendation~~ *should go at the end after evaluative criteria* |
| **Policy Benefit** |
| ~~Internal Benefits of Implementation:~~ |
| ~~Internal Impacts of Implementation:~~ |
| ~~External Benefits of Implementation:~~ |
| ~~External Impacts of Implementation:~~ |
| Equity Considerations |
| Environmental Considerations |
| Operational Impacts |
| **Strategic Plan Goal Alignment** |
| Staff Resources Needed (Number of FTE/hours, Type of staff resource needed): |
| Costs (Amount(s), Funding Source): |
| **Rationale for Recommendation** *(after analysis)* |

Lori Droste
Vice Mayor District 8

# SUPPLEMENTAL AGENDA MATERIAL
# for Supplemental Packet 3

**Meeting Date:** May 18, 2021

**Item Number:** 2

**Item Description:** Systems Realignment

**Submitted by:** Vice Mayor Lori Droste

**Subject:** Comments on Systems Realignment

Lori Droste
Vice Mayor District 8

To: Mayor and Council
From: Vice Mayor Lori Droste
Subject: Comments on the Systems Realignment

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Subject: [Brief Report Title (No underline and not all caps.)]

RECOMMENDATION Adopt a Resolution… or Support … or write a letter to ___ in support of _____… or other recommendation….

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Councilmember [First Last Name] Council District [District No.] 510-981-[XXXX]
Attachments: [Delete if there are NO Attachments]
1: Resolution Exhibit A: [Title or Description of Exhibit] Exhibit B: [Title or Description of Exhibit]
2: [Title or Description of Attachment]
3: [Title or Description of Attachment]

Implementation Conference Worksheet

| |
|---|
| Descriptive Title |
| Consent Action or Information |
| Recommendation |
| **Problem** Statement |
| Background, etc |
| Plans, etc. |
| **Current Situation and Its Effects** |
| Actions/Alternatives Considered |
| **Stakeholders Consultation and Results** |
| ~~Internal Stakeholders Consulted~~ |
| ~~Name/date of Commission(s) item submitted to for input~~ |
| ~~List of external stakeholders consulted~~ |
| ~~Summary of what was learned from consulting stakeholders~~ |
| ~~Rationale for Recommendation~~ *should go at the end after evaluative criteria* |
| **Policy Benefit** |
| ~~Internal Benefits of Implementation:~~ |
| ~~Internal Impacts of Implementation:~~ |
| ~~External Benefits of Implementation:~~ |
| ~~External Impacts of Implementation:~~ |
| Equity Considerations |
| Environmental Considerations |
| Operational Impacts |
| **Strategic Plan Goal Alignment** |
| Staff Resources Needed (Number of FTE/hours, Type of staff resource needed): |
| Costs (Amount(s), Funding Source): |
| **Rationale for Recommendation** *(after analysis)* |

# SYSTEMS ALIGNMENT

## PROCESS PROPOSAL FOR VETTING & PRIORITIZING MAJOR ITEMS

# THE TEAM

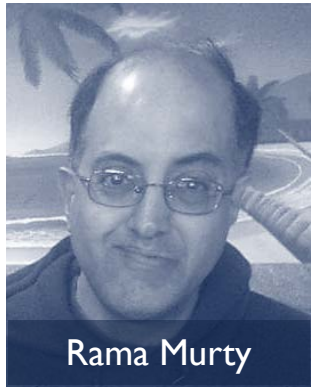
Dee Williams-Ridley

Dave White

Paul Buddenhagen

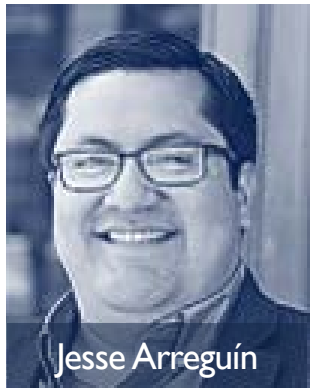
Farimah Faiz Brown

Mark Numainville


Rama Murty

Melissa McDonough

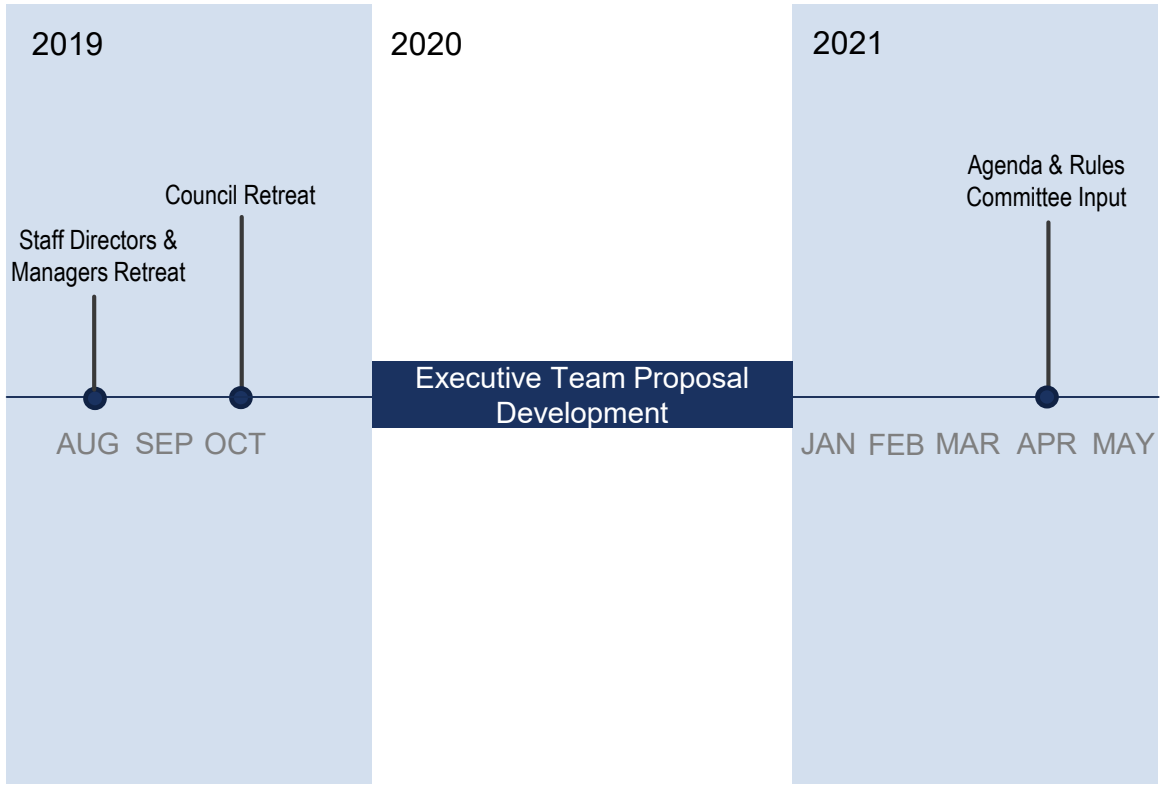
## AGENDA & RULES COMMITTEE

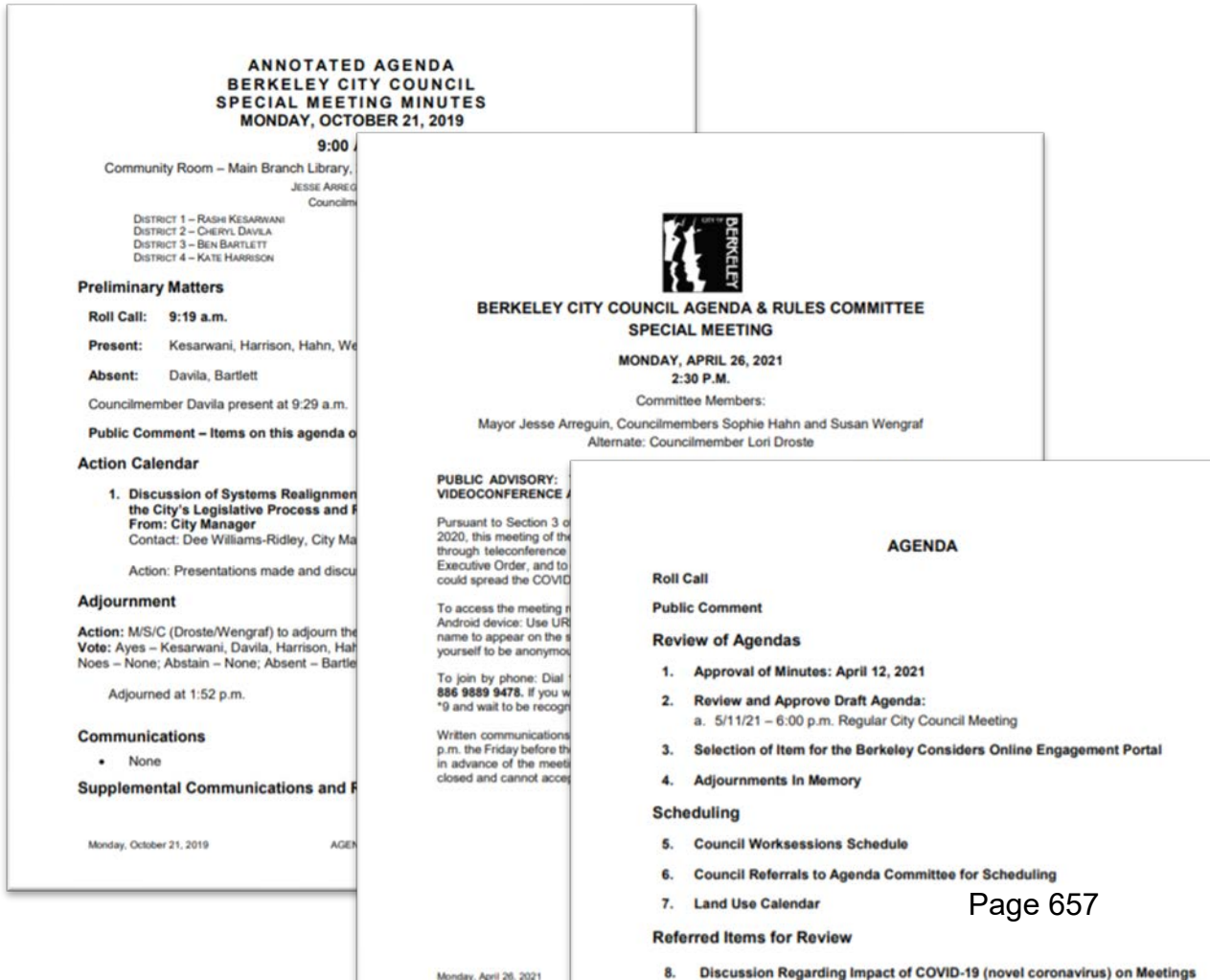

Jesse Arreguín

Sophie Hahn

Susan Wengraf

# BACKGROUND



ANNOTATED AGENDA
BERKELEY CITY COUNCIL
SPECIAL MEETING MINUTES
MONDAY, OCTOBER 21, 2019

Preliminary Matters

Action Calendar

Adjournment

Communications

BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING

MONDAY, APRIL 26, 2021
2:30 P.M.

Committee Members:
Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf
Alternate: Councilmember Lori Droste

AGENDA

Roll Call

Public Comment

Review of Agendas

1. Approval of Minutes: April 12, 2021
2. Review and Approve Draft Agenda:
   a. 5/11/21 – 6:00 p.m. Regular City Council Meeting
3. Selection of Item for the Berkeley Considers Online Engagement Portal
4. Adjournments In Memory

Scheduling

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

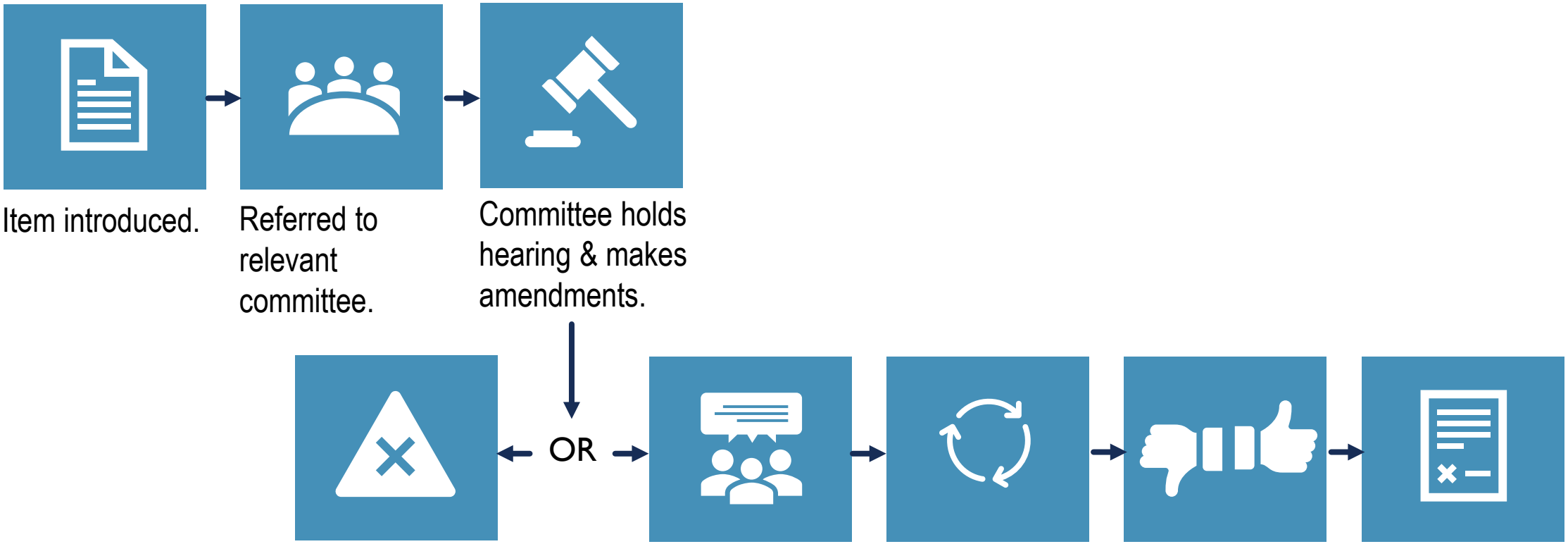
Referred Items for Review

8. Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings

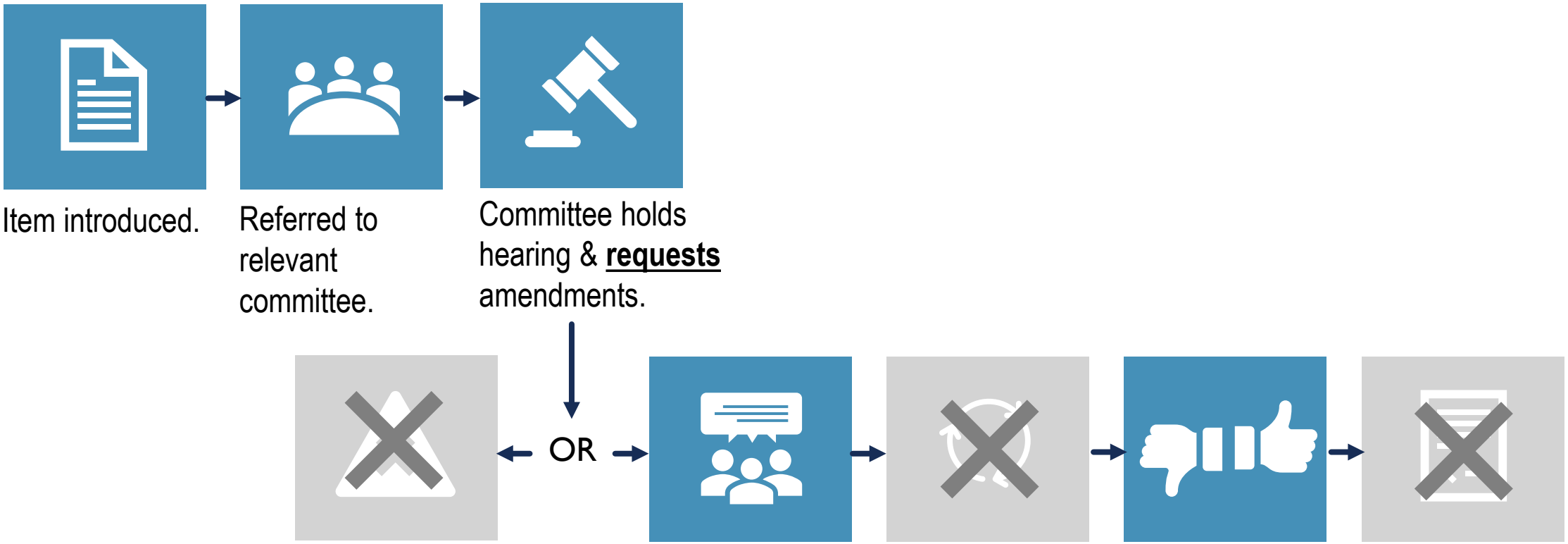
# OBJECTIVES

- Align timing of Council approval and resource (budget) allocation
- Communicate resource needs (and any tradeoffs) well
- Ensure Council priorities are resourced and implemented

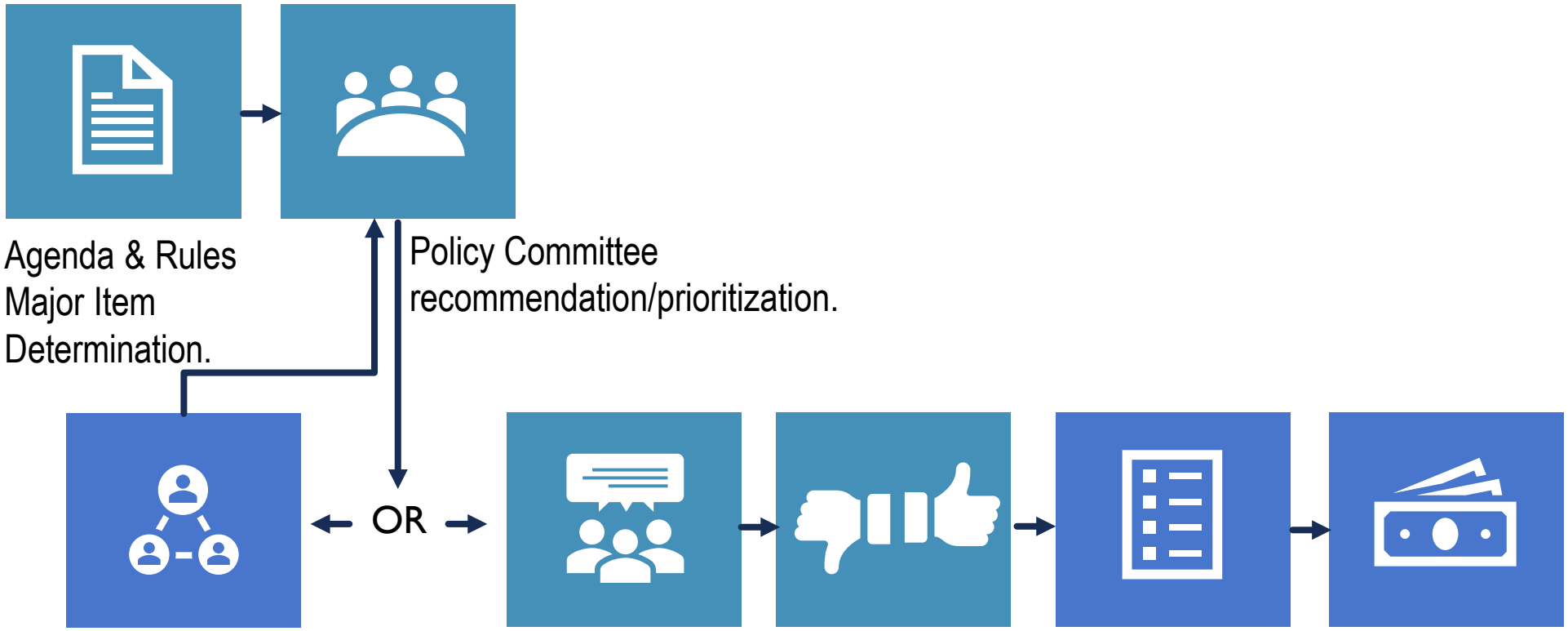
# STATE OR FEDERAL MODEL



# HYBRID MODEL



# PROPOSED MODEL



# IMPLEMENTATION CONFERENCE?

- What: Strong analysis and collaborative consultation
  - Identify costs\benefits
  - Identify resource needs
  - Outline high level work plan
- Who:
  - Commission Input (e,g, Chair or Vice Chair)
  - Staff & Legal
  - External Stakeholders
- How:
  - Ensure you've done your due diligence with the above
  - Meet with staff/legal

# VETTING IS TIME WELL SPENT!

## Cousin Janice

- Researched online, in magazines
- Talked to friends, designer, contractor
- Obtained supplies
- Contractor starts work
- Moved out for **weeks**
- **Loves** the result

## Friend Cathy

- Talked to contractor
- Contractor starts work
- Waited for supplies→Contractor stops work
- Supplies arrive→Contractor restarts work
- Moved out for **months**
- **Still refining** the result

# WHY PRIORITIZE AT POLICY COMMITTE

NOT RECOMMENDED

- Agenda & Rules Committee
  - **Appointees:**
    Jesse Arreguin, Mayor
    Sophie Hahn, Councilmember, District 5
    Susan Wengraf, Councilmember, District 6
  - **Alternate:** Lori Droste, Councilmem
- Budget & Finance Committee
  - **Appointees:**
    Jesse Ar
    K
    , Councilmember, District 1
    are, Transportation, Environment & Sustainability Committee
    ittees:
    erry Taplin, Councilmember, District 2
    Kate Harrison, Councilmember, District 4
    Rigel Robinson, Councilmember, District 7
  - **Alternate:** Sophie Hahn, Councilmember, District 5

nment, Equity & Community Committee
ppointees:
Rashi Kesarwani, Councilmember, District 1
Terry Taplin, Councilmember, District 2
Ben Bartlett, Councilmember, District 3
- **Alternate:** Rigel Robinson, Councilmember, District 7

- Land Use, Housing & Economic Development Committee
  - **Appointees:**
    Sophie Hahn, Councilmember, District 5
    Rigel Robinson, Councilmember, District 7
    Lori Droste, Councilmember, District 8
  - **Alternate:** Ben Bartlett, Councilmember, District 3
- Public Safety Committee
  - **Appointees:**
    Rashi Kesarwani, Councilmember, District 1
    Ben Bartlett, Councilmember, District 3
    Susan Wengraf, Councilmember, District 6
  - **Alternate:** Terry Taplin, Councilmember, District 2

# A QUICK NOTE ON FORMS

- Major Item Determination Checklist
- Implementation Conference Worksheet
- Policy Committee Ranking Form
- Revised Report Template

# Major Item Determination Checklist

**Item Name:**

**Item Author:**

**Is this a Major Item?**

| Yes | No | |
|---|---|---|
| ☐ | ☐ | Item represents a significant change to existing law, program, or policy. |
| ☐ | ☐ | Item represents a significant addition to existing law, program, or policy. |
| ☐ | ☐ | Item is likely to call for or elicit significant study, analysis or input from staff, Councilmembers, or members of the public |

**Is this eligible for an Exemption?**

| Yes | No | |
|---|---|---|
| ☐ | ☐ | Item is related the City's COVID-19 response. |
| ☐ | ☐ | Item is related to the City Budget process. |
| ☐ | ☐ | Item is related to essential or ongoing City processes or business. |
| ☐ | ☐ | Item is urgent. |
| ☐ | ☐ | Item is time-sensitive. |
| ☐ | ☐ | Item is smaller. |
| ☐ | ☐ | Item is less impactful. |

**Agenda Committee Determination:**

☐ Major Item ☐ Exempted

Indicate name and date below.

Per Committee Member_____

Per Committee Member_____

Per Committee Member_____

**Policy Committee Confirmation:**

☐ Determination Confirmed ☐ Sent back to be agendized for full Council consideration

Indicate name and date below.

Per Committee Member_____

Per Committee Member_____

# Implementation Conference Worksheet

**Item Name:**

**Item Author:**

**AUTHOR SECTION**

Use this section to help record required informat

| |
|---|
| Descriptive title: |
| Is this for Consent, Action, or Information Caler |
| Recommendation: |
| Summary statement: |
| Background (history, circumstances and conce |
| Plans, programs, policies and/or laws were tak |
| Actions/alternatives considered: |
| Internal stakeholders consulted: |
| Name/date of Commission(s) item submitted to |
| List of external stakeholders consulted: |

| |
|---|
| Summary of what was learned from consulti |
| Rationale for recommendation: |
| Internal Benefits of Implementation: |
| Internal Impacts of Implementation: |
| External Benefits of Implementation: |
| External Impacts of Implementation: |
| Launch and Implementation Milestones (see |
| Environmental Impacts: |
| Operational Impacts: |
| Staff Resources Needed: |

**STAFF SECTION**

Use this section to provide required information for the report.

| Estimated Launch/implementation Deliverables/Dates: | |
|---|---|
| *Month/Year* | *Deliverable* |
| | |

| Estimated Administration Deliverables/Dates: | |
|---|---|
| *Month/Year* | *Deliverable* |
| | |

**Legal Consultation**:

☐ Confirmed

Name/Date _____

**Staff Consultation**:

☐ Confirmed

# Policy Committee Ranking Form

Starting on the right, think about and then indicate whether each co… …ow (L). Then rank the list of priorities. The highest priority would be "1", the …

| Priority<br>1 is highest | Major Item Name | | Considerations<br>H high M medium L low | | |
|---|---|---|---|---|---|
| | | | Staff Resources | Cost | Benefits/ Savings |
| | | | | | |
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**Policy Committee Determination**:

Indicate name and date below.

Per Committee Member_____

Per Committee Member_____

Per Committee Member_____

NOT RECOMMENDED

[First Lastname]
Councilmember District [District No.]

[CONSENT *OR* ACTION]
CALENDAR
[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council

From: [Councilmember (lastname)]

Subject: [Brief Report Title (No underline and not all caps.)]

RECOMMENDATION
Adopt a Resolution…
or Support …
or write a letter to ___ in support of _____…
or other recommendation….

FISCAL IMPACTS
*This section must include operational impacts, identify any staff resources (full time exempt employee/FTE) required, and financial costs.*

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- attract and retain a talented and diverse City government workforce.

BACKGROUND

CONSULTATION OVERVIEW
*This section should list the external and internal stakeholders, indicate whether the item was submitted to a commission for input, and summarize what was learned from consulting with stakeholders.*

ENVIRONMENTAL SUSTAINABILITY

CONTACT PERSON
Councilmember [First Lastname] Council District [District No.] 510-981-[XXXX]

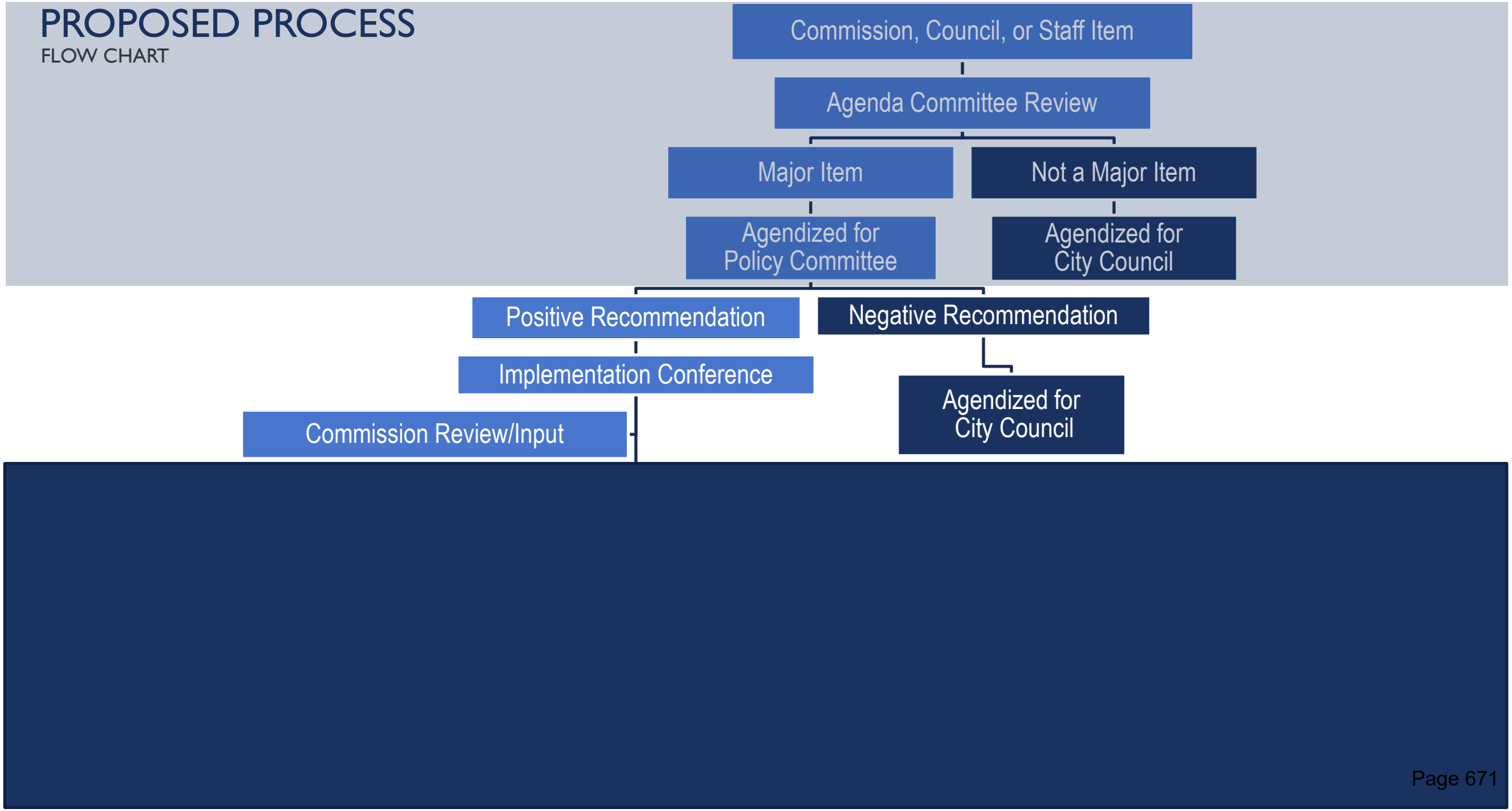
Attachments: [Delete if there are NO Attachments]
1: Resolution
Exhibit A: [Title or Description of Exhibit]
Exhibit B: [Title or Description of Exhibit]
2: [Title or Description of Attachment]
3: [Title or Description of Attachment]

# PROPOSED PROCESS

FLOW CHART

# PROPOSED PROCESS

FLOW CHART



# PROPOSED PROCESS

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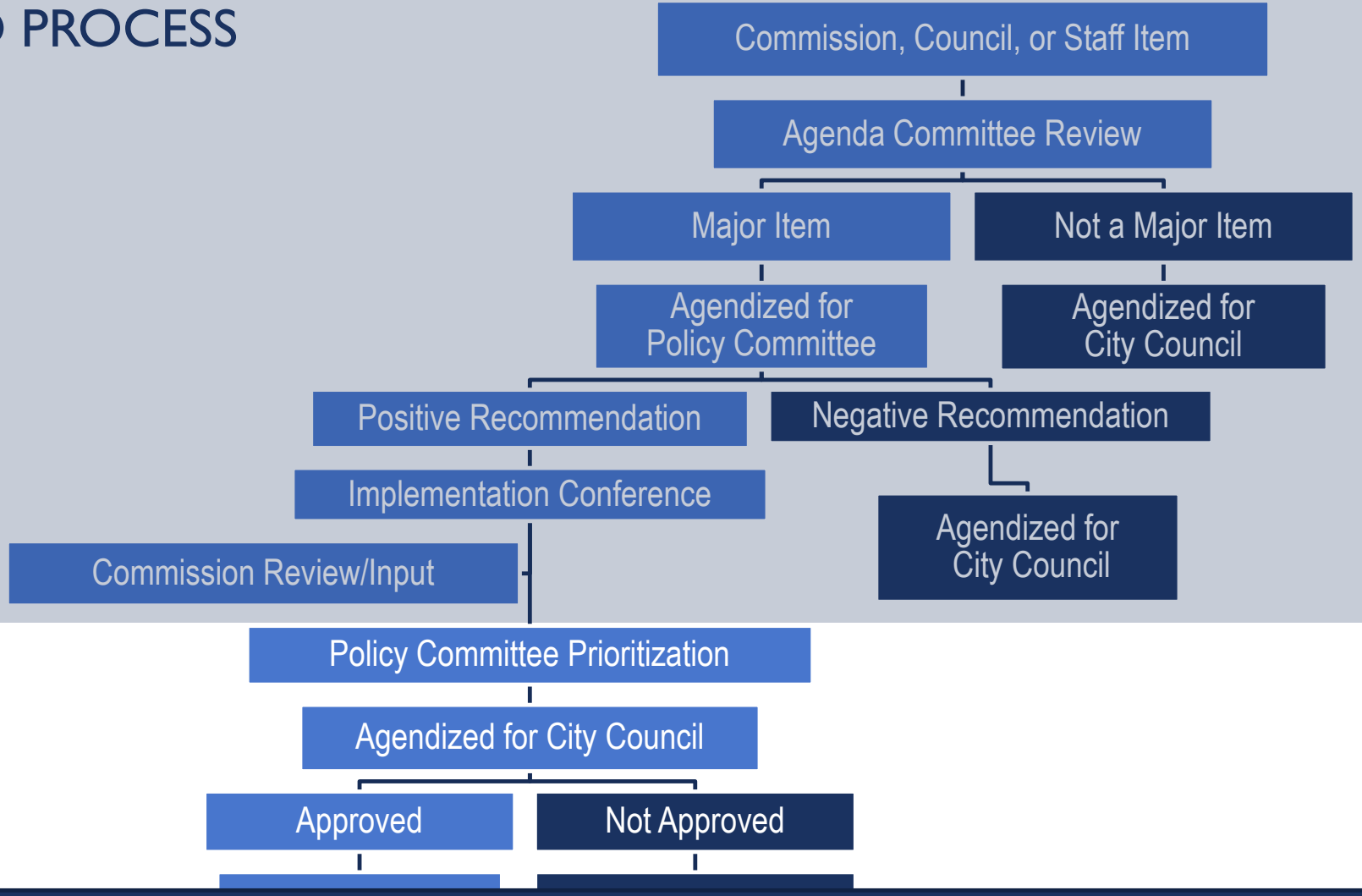

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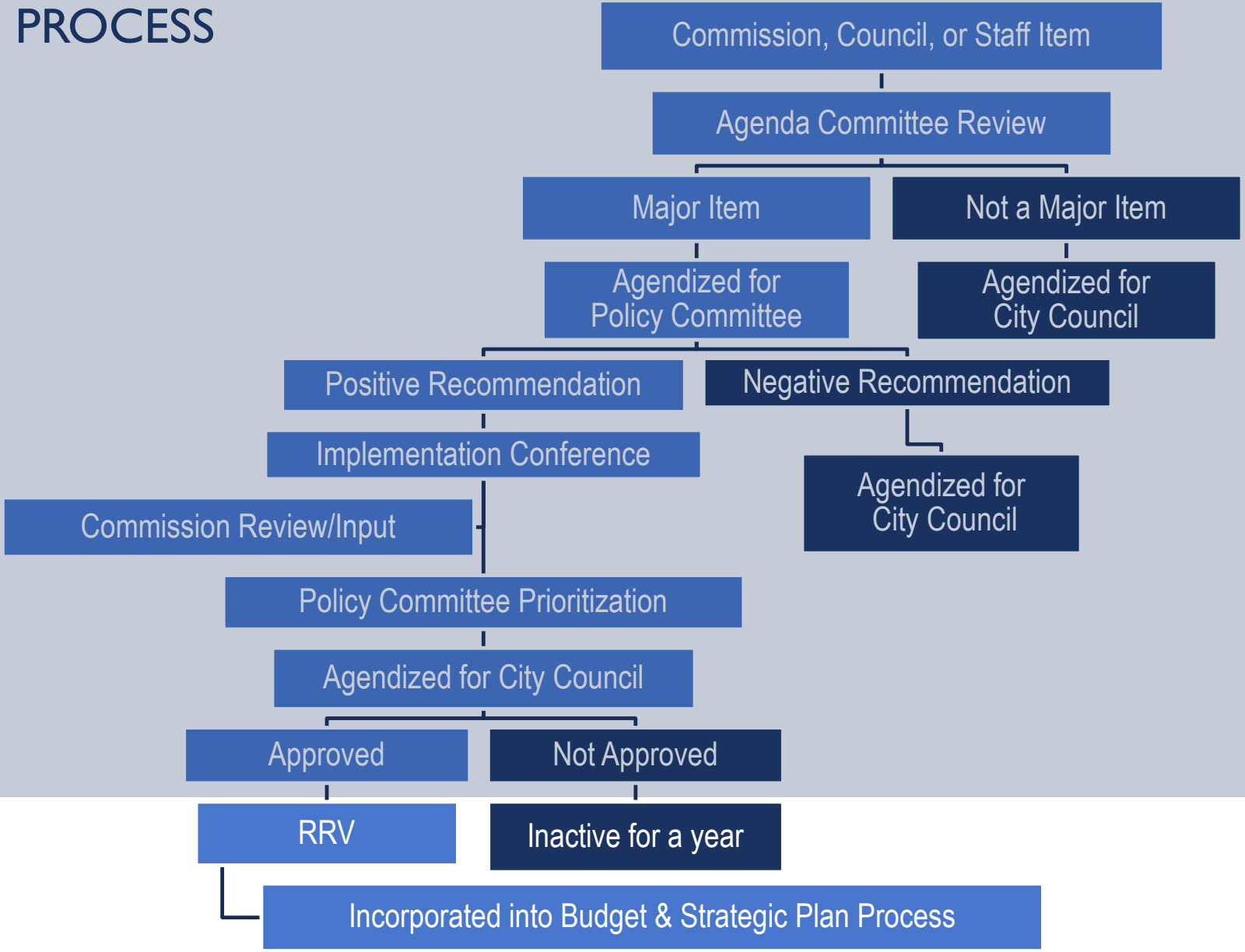
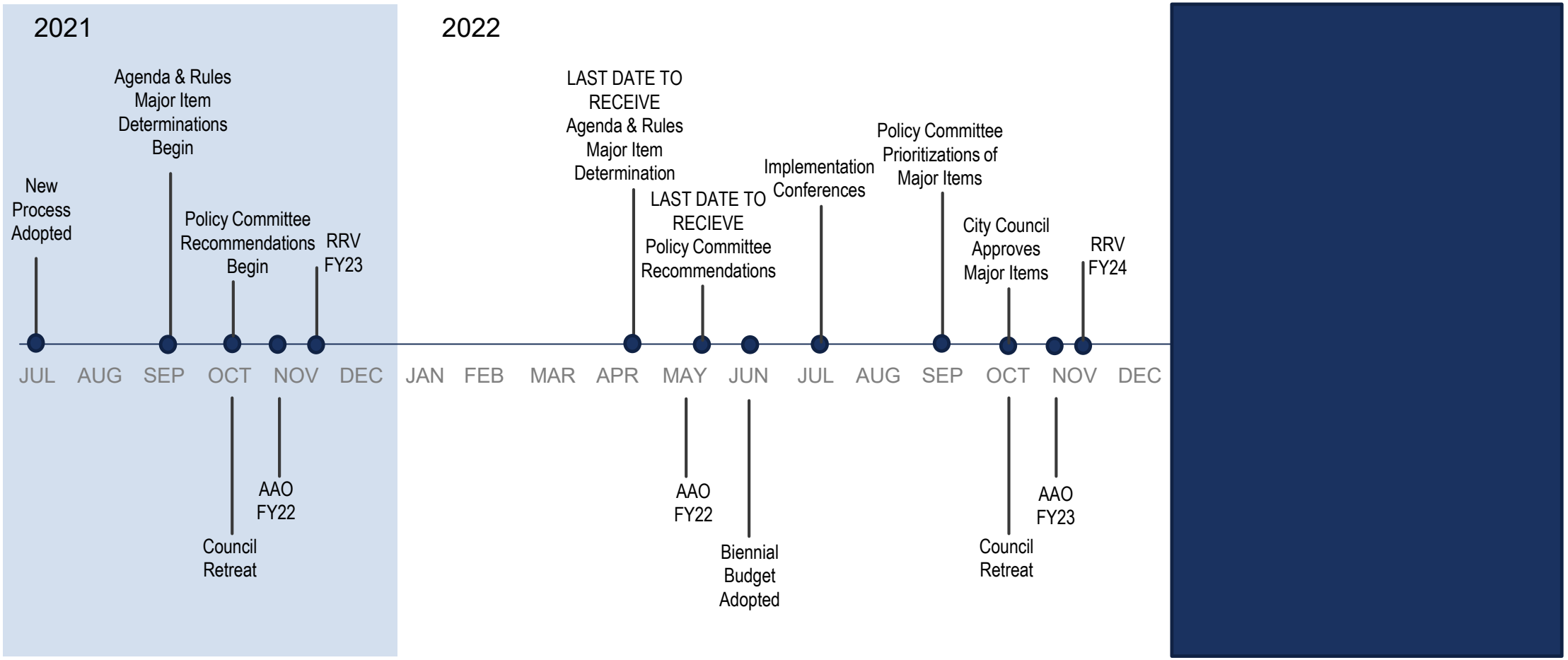


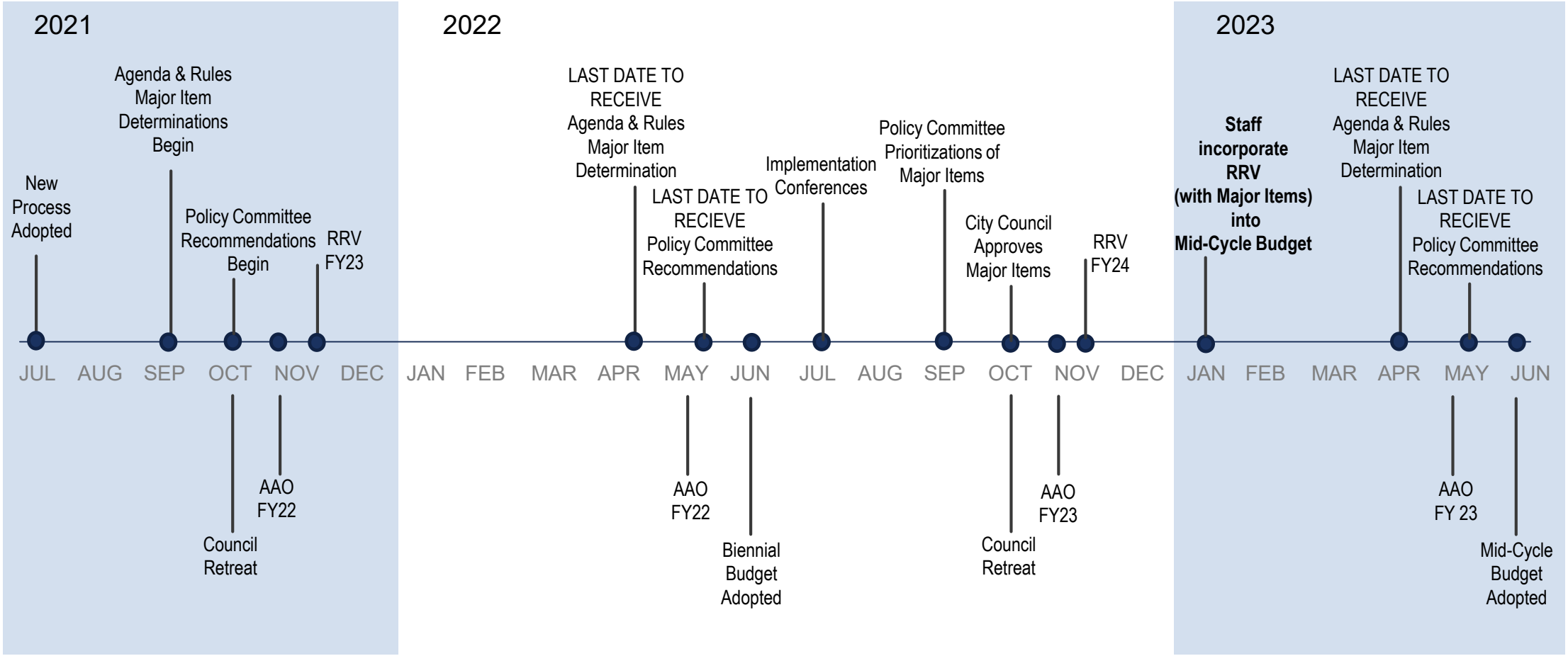
# PROPOSED IMPLEMENTATION

PHASE-IN OF SYSTEMS ALIGNMENT




# PROPOSED IMPLEMENTATION

PHASE-IN OF SYSTEMS ALIGNMENT




# PROPOSED IMPLEMENTATION

PHASE-IN OF SYSTEMS ALIGNMENT

# SEQUENCING & TIMING

## Existing

1. Idea
2. Committee Consideration
3. Council Approval
4. Costing
5. Budget development
6. RRV

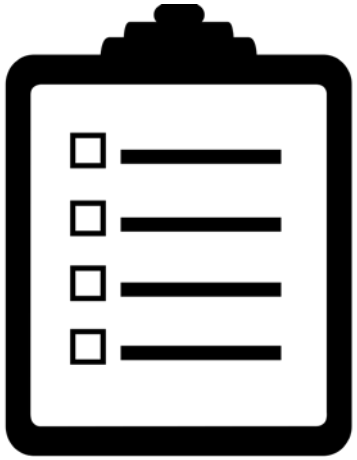
Uncertain Timeline

## Proposed

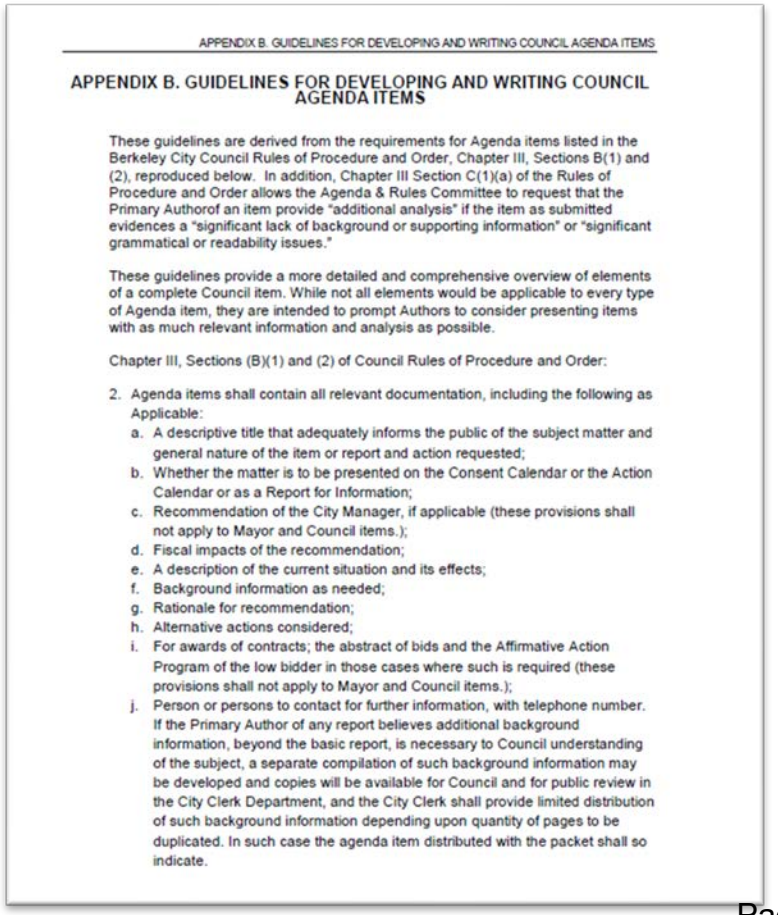
1. Idea
2. Committee Consideration
3. Vetting & Costing
4. Council Approval
5. RRV
6. Budget development

Certain Timeline

# WHAT'S DIFFERENT



- Mandatory Guidelines
- Implementation Conferences
- Policy Committee Prioritization
- Moving the RRV process
- New required forms and processes



APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the Primary Authorof an item provide "additional analysis" if the item as submitted evidences a "significant lack of background or supporting information" or "significant grammatical or readability issues."

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt Authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
   a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
   b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
   c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
   d. Fiscal impacts of the recommendation;
   e. A description of the current situation and its effects;
   f. Background information as needed;
   g. Rationale for recommendation;
   h. Alternative actions considered;
   i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
   j. Person or persons to contact for further information, with telephone number. If the Primary Author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

# SO, HOW DO WE MAKE THIS HAPPEN?

- Adopting aligned timeline and new process
  - Incorporating vetting and costing (i.e., implementation conferences)
  - Prioritizing vetted Major Items (prioritize, assign fiscal year, identify projects to remove to accommodate new Major Items)
  - Revising City Council Rules of Procedure and Order
- Making Appendix B guidelines mandatory
- Addressing adopted, open referrals
- Addressing Council items under consideration

# BENEFITS

- Ensures **continuous improvements**
- Provides adequate context and impacts of items to **enhance Council decision-making**
- Identifies appropriate and necessary resources so that **adopted items are adequately resourced**
- Aligns processes to **ensure efficient implementation/realization of Council items**
- **Increases collaboration** among and between stakeholders

# NEXT STEPS

Legislative aide roundtable

City Manager and Councilmember One-on-Ones

Revise and return item in July

# THANK YOU.

Office of the City Manager

WORKSESSION
May 18, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David White, Deputy City Manager

Subject: Systems Alignment Proposal

## RECOMMENDATION
Direct the City Manager to bring back a resolution for adoption of the Systems Alignment proposal as described in this document and incorporating direction and input received from City Council during the worksession.

## SUMMARY
This report proposes a process to integrate various systems (e.g., budget, Strategic Plan, prioritization of referrals, etc.) to ensure that resources are appropriately allocated, to focus the organization and employees on those priorities established by the City Council and City Manager, and to enhance legislative and budget processes. Ultimately, aligning systems will help ensure our community's values as reflected in the policies of our City Council are implemented completely and efficiently, with increased fiscal prudence, while supporting more meaningful service delivery. In light of the economic and financial impacts of COVID-19 and resource constraints, it is imperative to improve vetting and costing of new projects and legislative initiatives to ensure success. In addition, the purpose of this proposal will align our work with the budget process.

## FISCAL IMPACTS OF RECOMMENDATION
While the recommendation of this report would not entail fiscal impacts, if adopted, the proposal would have budgetary effects. Broadly speaking, the proposal is designed to better ensure adequate financial and staffing resources are identified and approved with any adopted significant legislation[1] (Major Item).

## CURRENT SITUATION AND ITS EFFECTS
The proposed changes outlined in this memorandum will better guide and inform budget development, clarify tradeoffs by identifying operational impacts, and develop a more effective and time-efficient path to implementation. These changes support a clear and

[1] New significant legislation is defined, with some explicit exceptions, as "any law, program, or policy that represents a significant change or addition to existing law, program, or policy, or is likely to call for or elicit significant study, analysis, or input from staff, Councilmembers or members of the public". See Council Rules of Procedure, https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure.pdf.

full realizing of City Council policies, programs, and vision. The major features of the proposal are:

- Changing the order of the legislative process to ensure that Major Items (defined below) passed by Council are funded, as well as folded into staff workplans and staffing capacity,
- Making the City Council Rules of Procedure Appendix B guidelines mandatory,
- Ensuring that Major Items that are adopted by City Council are vetted and clearly identify the resources needed for implementation,
- Consolidating and simplifying reporting and tracking of Major Items, and
- Creating a deadline for each year's Major Items that allows for alignment with prioritization, the Strategic Plan, and the budget process.

Additionally, the proposed Systems Alignment would advance the City's Strategic Plan goal to provide an efficient and financially-health City government.

## PROPOSED PROCESS

The proposed process outlined in this memorandum replaces the current system of referrals (short and long term, as well as Commission referrals), directives, and new proposed ordinances, that is, all Major Items, regardless of "type" or origin will be subject to this process.

### Step 1: Major Item Determination

The systems alignment proposal outlines a process for Major Items.

#### *Defined in Council Rules of Procedure*

Major Items are "new significant legislation" as defined in Appendix D of the City Council Rules of Procedure:

> Except as provided below, "new significant legislation" is defined as any law, program, or policy that represents a significant change or addition to existing law, program, or policy, or is likely to call for or elicit significant study, analysis, or input from staff, Councilmembers or members of the public.

The exceptions to the definition of new significant legislation and process state:

> New significant legislation originating from the Council, Commissions, or Staff related to the City's COVID-19 response[2], including but not limited to health and economic impacts of the pandemic or recovery, or addressing other health and safety concerns, the City Budget process, or other essential or ongoing City processes or business will be allowed to move forward, as well as legislative items that are urgent, time sensitive, smaller, or less impactful.

[2] If this proposal is adopted, "COVID-19" should be replaced with "declared emergency response" in the exception language.

The Agenda & Rules Committee, in consultation with the City Manager, will make the initial determination of whether something is a Major Item, using the Major Item Determination Checklist (see attachment 1). At any time in the process, if evidence demonstrates that the initial determination of the proposal as a Major Item proves incorrect, then it is no longer subject to this process. Additionally, if any legislation it originally deemed not to be a Major Item, the author or City Manager may appeal to the Agenda and Rules Committee or to the full Council and present evidence to the contrary.

***Required Conformance and Consultation***
All Major Items must use the agenda guidelines in Appendix B of the Council Rules, which require more detailed background information and analysis. The Agenda and Rules Committee can send the item back to the author if it is not complete and/or does not include all of the information required in Appendix B. The author must make a good faith effort to ensure all the guideline prompts are completed in substance not just in form.

Major Items must include a section noting whether the author has initially consulted with the City Manager or city staff regarding their proposed Major Item and the substance of those conversations, and initial staff input.

***Required Submission Date***
A Major Item must be submitted in time to appear on the agenda of an Agenda & Rules Committee meeting occurring no later than April 30 of every year. Any item submitted after that deadline, that does not meet an exemption, will be continued to the following year's legislative process.

Major Items will be referred by the Agenda & Rules committee on a rolling basis.

**Step 2: Policy Committee Review**
A Major Item, once introduced and deemed complete and in conformance by the Agenda and Rules Committee, will be referred to one of City Council's Policy Committees (i.e., Health, Life Enrichment, Equity and Community, Public Safety, etc.), for review, recommendation, and high-level discussion of implementation (i.e., ideas, rough cost estimates, benefits, etc.). Per the *Council Rules of Procedure*,[3] the Policy Committee will review the Major Item and the completed Major Item Determination Checklist to confirm Agenda & Rules initial determination that the Major Item is complete in accordance with Section III.B.2 and aligns with Strategic Plan goals. If the Major Item receives a positive or qualified positive recommendation, then it will go to an Implementation Conference (See step 3, Vetting and Costing).

[3] https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure%20-%20Feb%2011%202020%20-%20FINAL.pdf

If the Major Item receives a negative or qualified negative recommendation, then it will be returned to the Agenda and Rules Committee to be placed on a City Council Agenda. When heard at a City Council meeting, the author can advocate for the Major Item to be sent to an Implementation Conference. If the Major Item does not receive a vote by the majority of City Council at this step, it becomes inactive for that year's legislative calendar but may be reintroduced for the next year's calendar.

City Council Policy Committees must complete review of all Major Items assigned to them no later than June 30 of each year.

**Step 3: Implementation Conference (Vetting and Costing)**
At an Implementation Conference, the primary author will meet with the City Manager or designee, City Manager-selected staff subject matter experts, and the City Attorney or designee.

***Identifying Fiscal, Operational and Implementation Impacts***
The intended outcome of an Implementation Conference is a strong analysis containing all of the considerations and resources necessary to support implementation should Council choose to approve the Major Item.

The Implementation Conference is an informal meeting where the primary author can collaborate with the City Manager, City Attorney, and staff to better define the Major Item and identify more detailed fiscal and operational impacts, as well as implementation considerations. The information discussed during the Implementation Conference will be summarized in the Council Report as part of newly required sections (see attachment 2), in conformance with Appendix B:

- *Initial Consultation*, which
    - Lists internal and external stakeholders that were consulted, including whether item was concurrently submitted to a Commission for input,
    - Summarizes and confirms what was learned from consultation,
    - Confirms legal review addressing any legal or pre-emption issues, ensuring legal form,[4]
- *Implementation, Administration, and Enforcement*, which
    - Identifies internal and external benefits and impacts, and
    - Considers equity implications, launch/initiation of Major Item and its ongoing administration, and
- *Fiscal & Operational Impacts*, which
    - Summarizes any operational impacts,

[4] While consultation with the City Attorney is mentioned in Appendix B, the legal review and "confirmations" recommended in this proposal is a more specific and robust requirement.

- Identifies necessary resources, including specific staff resources needed and costs.[5]

As part of the Implementation Conference, staff will provide a high level work plan, indicating major deliverables/milestones and dates. This information can be collected and recorded using the Implementation Conference Worksheet (see attachment 2).

Implementation Conferences will be date certain meetings held in July.

***Revising the Major Item***

After the Major Item's author revises the original Council Report based on information from the Implementation Conference, the Major Item will be submitted to the Council agenda process. If additional full time equivalent employee(s) (FTE) or fiscal resources are needed, the Major Item must include a referral to the budget process and identify the amount for implementation of the policy or program.

**Step 4: Initial Prioritization**

At their first meetings in September, Policy Committees must complete the ranking of the Major Items which were referred to them and also completed the Implementation Conference. The Policy Committees will provide these rankings in the form of a recommendation to the City Council. The Policy Committees prioritization will use the Policy Committee Ranking Form (see attachment 3) to standardize consideration of Major Items across Policy Committees. The Policy Committee priority rankings will be submitted to the City Council when the Council is considering items to move forward in the budget and Strategic Plan process.

**Step 5: City Council Approval and Final Prioritization**

Under this proposal, all Major Items that the City Council considers for approved prioritization must have:

1. Received a City Council Policy Committee review and recommendation,
2. Received a City Council Policy Committee prioritization,
3. Completed the Implementation Conference, and
4. Been placed on the Agenda for a regular of special Council meeting in October for approval and inclusion in the RRV process.

At the designated Council meeting in October, staff will provide the Council with a list of all approved Major Items, including the initial prioritization by Policy Committee. The Council will consider each Major Item for approval. All approved Major Items then will be added to the RRV process (i.e., with other items, referrals, etc) and ranked. The RRV ranking will begin in late October. These rankings will be adopted by Council and

[5] Appendix B does require a Fiscal Impacts section, but the inclusion of operational impacts and specific noting of required staff resources and costs recommended in this proposal is a more specific and robust requirement.

used to inform the development of the draft budget. Approved and ranked Major Items have multiple opportunities to be approved for funding, when the biennial budget or mid-cycle budget is adopted in June or when the Annual Appropriations Ordinances are adopted in May and November.

If a Major Item *does not receive the endorsement* of City Council at this step, it becomes inactive for that year's legislative calendar and may be reintroduced for the next year's calendar.

City Council must complete its Major Items approval, and RRV process no later than the final meeting in December of each year.[6] This ensures that staff is able to develop the budget starting from and based on Council priorities.

***Step 6: Budget & Strategic Plan Process***

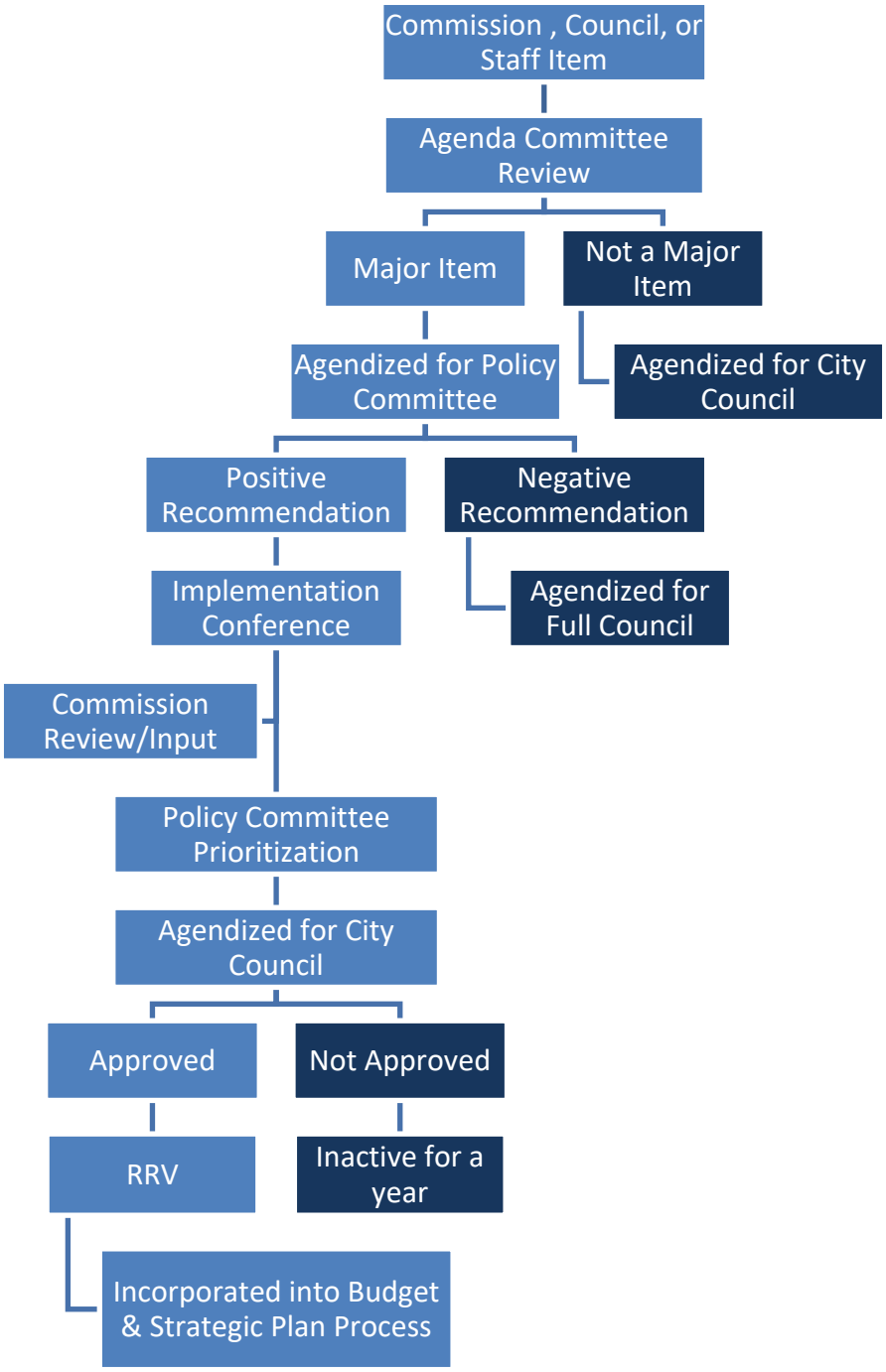
The Council's rankings are also forwarded to the Budget and Finance Committee for consideration as part of budget development. If the proposal is not ultimately funded in the biennial budget, mid-cycle budget or the Annual Appropriations Ordinance (mid-year budget amendment), then it does not move forward that year and will be added to a list of unfunded proposals for the future budget process.

During December and January, city staff will prepare budget proposals that incorporate the ranked City Council Major Items, Strategic Plan, and work plan development. In the late winter/early spring, the City Manager and Budget Office will present the draft budget to Council. This will be followed by department presentations to the Budget and Finance Policy Committee. From late March and through early May, Council and staff will refine the budget. Council will hold budget hearings in May and June, with adoption of the budget by June 30. Although the legislative process (i.e., Policy Committee review, Implementation Conference, Prioritization) is annual, staff recommends the budget process remain biennual. A significant mid-cycle budget update can easily accommodate additions to or changes in priorities arising through the legislative process.

The proposed process is depicted in Figure 1 and the proposed launch calendar in Figure 2.

[6] Due to noticing requirements, an RRV process completed by November 30 may not appear on a City Council Agenda for adoption until January.

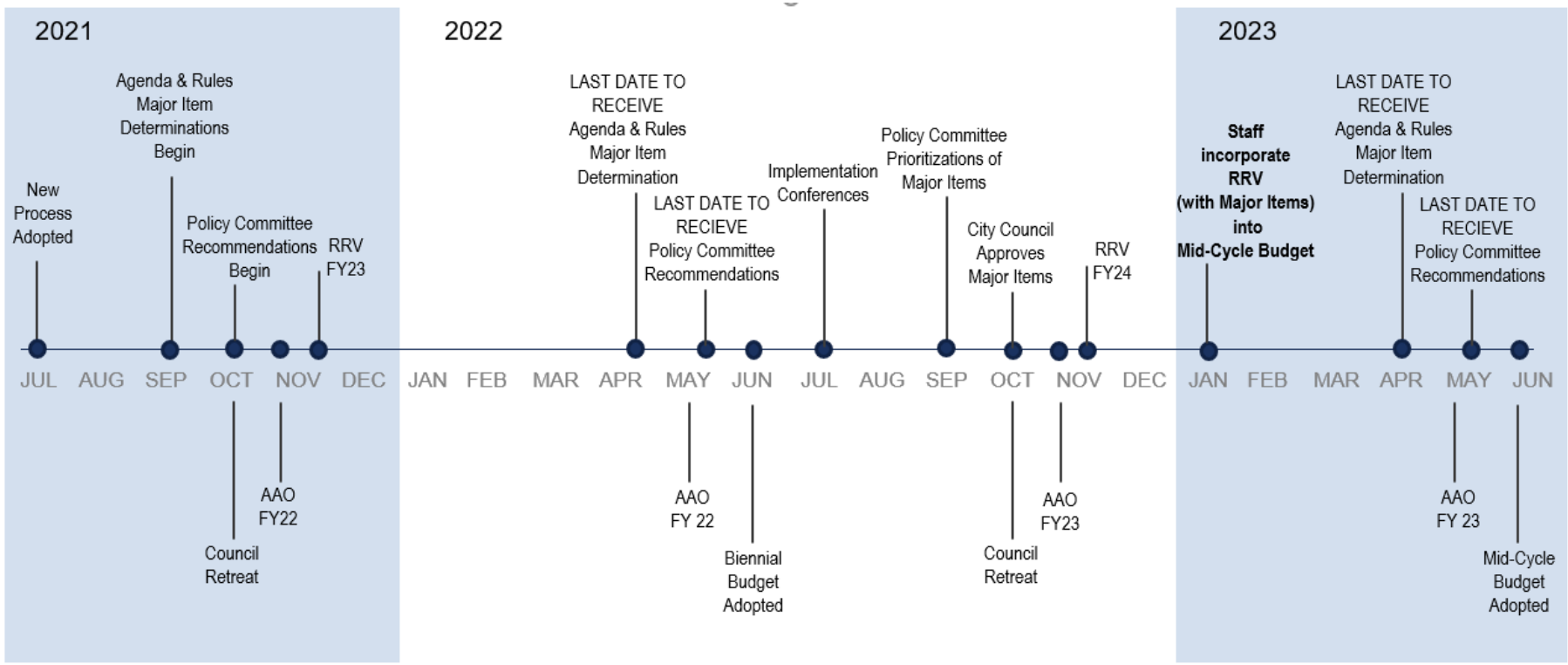
*Figure 1, Proposed Process*[7]




[7] Major Items that are ordinances will need to be examined on a case-by-case basis. Once adopted, ranked, and, if requiring resources, budgeted, the ordinance will need to be given an effective date and scheduled for first and second readings at Council.

Office of the City Manager

*Figure 2, Proposed Launch*



Office of the City Manager

**Next Steps**
Staff will reach out to legislative aides for input and the City Manager will meet individually with Councilmembers to discuss this proposal. Staff will incorporate Council input from the worksession, and from subsequent input< into a resolution and return to Council with a final Systems Alignment item for adoption by July 2021.

**Benefits**
The addition of an Implementation Conference will ensure that Major Items considered by Council are properly resourced, improving our City's responsible management of fiscal resources. Analysis from the Implementation Conference will help Council to balance and consider each Major Item within the context of related programs and potential impacts (positive and negative). When considered holistically, new policy implementation can be supportive of existing work and service delivery.

Since the proposed process places the City Council prioritization of Major Items immediately before budget preparation, the Prioritization will guide and inform budget development, including components such as the Strategic Plan and work plans. Fixing the sequencing of the process is a key benefit. Currently, with prioritization occurring in May and June, the budget process is nearing completion when City Council's priorities are finally decided. This leads to inconsistencies between adopted priorities and budgeting for those priorities.

Under the current process, an idea may go into prioritization, proceed to the short term referral list or referred to the budget process. However, the resulting Major Item may not have addressed operational considerations. Adding such items to a department's work at any given time of the year may lead to staff stopping or slowing work on other prioritized projects in order to develop and implement new Major Items. Also, it may be difficult for staff to prioritize their projects: is stopping/slowing of work that is already underway in order to address new items the preference of the full Council?

Also, because consideration of implementation currently occurs after the adoption of a Major Item, features of the adopted language may unintentionally constrain effective implementation, complicating and slowing progress on the Major Item and hindering the effectiveness of the new program or regulation.

With the proposed process, a Major Item does not go through prioritization until there is an opportunity for staff to identify operational considerations. Finally, since implementation only occurs after operational considerations are reported, and funds are

allocated, the resulting Major Item should move more quickly from idea to successful completion.

BACKGROUND
In October 2019, City Council held a half-day worksession to discuss systems realignment and provide direction on potential changes to the city's legislative process. The purpose of the meeting was to develop recommendations for how various systems (e.g., budget, Strategic Plan, RRV, etc) could better work together to ensure that the organization is able to focus on the priorities established by the City Council. The City Manager took direction from that meeting and worked with department directors and the Budget Office to create this proposal.

ENVIRONMENTAL SUSTAINABILITY
By improving efficiency, ensuring adequate resources, and strengthening implementation, this proposal would increase the speed and full adoption of new significant legislation, including sustainability work.

RATIONALE FOR RECOMMENDATION
The City of Berkeley is unique in comparison to many cities. It considers and approves many more policies, often at the cutting edge, than a typical city and especially for a city of its size. This proposal is a hybrid, incorporating city processes while mirroring State and Federal legislative processes which accommodate a larger number of policies and items in a given cycle. The disadvantage of this proposal is that it introduces additional steps, such as the implementation conference. The advantages of this proposal, are:

- Ensuring adopted legislation is adequately resourced, in terms of both staffing and budget;
- Providing adequate context for Council to balance and consider items in relation to potential positive and negative impacts; and
- Strengthening the effectiveness and efficiency of policy implementation.

ALTERNATIVE ACTIONS CONSIDERED
At the Council retreat in October 2019, a variety of approaches and ideas were discussed and considered. Additionally, the original version of this proposal was substantively revised through the Policy Committee process.

If the Council takes no action on this item, the existing process will continue to result in inadequately resourced adopted legislation and inefficient and complicated implementation.

CONTACT PERSON
David White, Deputy City Manager, 510-981-7012

Attachments:
1: Major Item Determination Checklist
2: Council Report Template and Implementation Conference Worksheet
3: Policy Committee Ranking Form

# Major Item Determination Checklist

**Item Name:**

**Item Author:**

**Is this a Major Item?**

| Yes | No | |
|---|---|---|
| ☐ | ☐ | Item represents a significant change to existing law, program, or policy. |
| ☐ | ☐ | Item represents a significant addition to existing law, program, or policy. |
| ☐ | ☐ | Item is likely to call for or elicit significant study, analysis or input from staff, Councilmembers, or members of the public |

**Is this eligible for an Exemption?**

| Yes | No | |
|---|---|---|
| ☐ | ☐ | Item is related the City's COVID-19 response. |
| ☐ | ☐ | Item is related to the City Budget process. |
| ☐ | ☐ | Item is related to essential or ongoing City processes or business. |
| ☐ | ☐ | Item is urgent. |
| ☐ | ☐ | Item is time-sensitive. |
| ☐ | ☐ | Item is smaller. |
| ☐ | ☐ | Item is less impactful. |

**Agenda Committee Determination:**

☐ Major Item ☐ Exempted

Indicate name and date below.

Per Committee Member_____

Per Committee Member_____

Per Committee Member_____

**Policy Committee Confirmation:**

☐ Determination Confirmed ☐ Sent back to be agendized for full Council consideration

Indicate name and date below.

Per Committee Member_____

Per Committee Member_____

Per Committee Member_____

DRAFT

[First Lastname]
Councilmember District [District No.]

[CONSENT *OR* ACTION]
CALENDAR
[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council

From: [Councilmember (lastname)]

Subject: [Brief Report Title (No underline and not all caps.)]

## RECOMMENDATION

Adopt a Resolution…
or Support …
or write a letter to ___ in support of _____…
or other recommendation….

## ~~FINANCIAL~~ FISCAL & OPERATIONAL IMPACTS ~~IMPLICATIONS~~

*This section must include operational impacts, identify any staff resources (full time exempt employee/FTE) required, and financial costs.*

## IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

*This section must describe benefits and impacts to both internal and external stakeholders. It should also consider equity; the launch or initiation of the item; and its ongoing administration once implemented.*

## CURRENT SITUATION AND ITS EFFECTS

*For items that relate to one of the Strategic Plan goals, include a standard sentence in the Current Situation and Effects or Background section:*
[Insert project name] is a Strategic Plan Priority Project, advancing our goal to [pick one:]

- provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.
- provide an efficient and financially-health City government.
- foster a dynamic, sustainable, and locally-based economy.
- create affordable housing and housing support service for our most vulnerable community members.
- create a resilient, safe, connected, and prepared city.
- champion and demonstrate social and racial equity.
- be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

DRAFT

- be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.
- attract and retain a talented and diverse City government workforce.

## BACKGROUND

## INITIAL CONSULTATION

*This section should list the external and internal stakeholders, indicate whether the item was submitted to a commission for input, and summarize what was learned from consulting with stakeholders.*

## ENVIRONMENTAL SUSTAINABILITY

## CONTACT PERSON

Councilmember [First Lastname] Council District [District No.] 510-981-[XXXX]

Attachments: [Delete if there are NO Attachments]
1: Resolution
Exhibit A: [Title or Description of Exhibit]
Exhibit B: [Title or Description of Exhibit]
2: [Title or Description of Attachment]
3: [Title or Description of Attachment]

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

SHORT TITLE OF RESOLUTION HERE

WHEREAS, (Whereas' are necessary when an explanation or legislative history is required); and

WHEREAS, (Insert Additional 'Whereas Clauses' as needed); and

WHEREAS, enter text here; and

WHEREAS, enter text here; and

WHEREAS, (The last "Whereas" paragraph should contain a period (.) .

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that (Action to be taken) - ends in a period (.).

BE IT FURTHER RESOLVED that (for further action if needed; if not delete) - ends in a period (.).

Exhibits **[Delete if there are NO exhibits]**
A: Title of the Exhibit
B: Title of the Exhibit

# Implementation Conference Worksheet

**Item Name:**

**Item Author:**

**AUTHOR SECTION**

The author of the item may complete this section to help record required information for the report.

| |
|---|
| Descriptive title: |
| Is this for Consent, Action, or Information Calendar? |
| Recommendation: |
| Summary statement: |
| Background (history, circumstances and concerns to be addressed by the item): |
| Plans, programs, policies and/or laws were taken into consideration: |
| Actions/alternatives considered: |
| Internal stakeholders consulted: |
| Name/date of Commission(s) item submitted to for input: |
| List of external stakeholders consulted: |

DRAFT

| |
|---|
| Summary of what was learned from consulting stakeholders: |
| Rationale for recommendation: |
| Internal Benefits of Implementation: |
| Internal Impacts of Implementation: |
| External Benefits of Implementation: |
| External Impacts of Implementation: |
| Equity Considerations: |
| Launch and Implementation Milestones (see staff section) |
| Environmental Impacts: |
| Operational Impacts: |
| Staff Resources Needed:<br><br>Number of FTE/hours:<br>Type of staff resource needed: |
| Costs:<br><br>Amount(s):<br>Funding Source: |

DRAFT

**STAFF SECTION**

Staff may complete section to provide required information for the report.

| Estimated Launch/implementation Deliverables/Dates: | |
|---|---|
| *Month/Year* | *Deliverable* |
| Estimated Administration Deliverables/Dates: | |
| *Month/Year* | *Deliverable* |

**Legal Consultation**:

☐ Confirmed

Name/Date _____

**Staff Consultation**:

☐ Confirmed

Name(s)/Date(s) _____

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# Policy Committee Ranking Form

Starting on the right, think about and then indicate whether each consideration is high (H), medium (M) or low (L). Then rank the list of priorities. The highest priority would be "1", the next highest "2" and so on.

| **Priority** 1 is highest | **Major Item Name** | **Major Item Author** | **Considerations** H high M medium L low | | |
|---|---|---|---|---|---|
| | | | **Staff Resources** | **Cost** | **Benefits/ Savings** |
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**Policy Committee Determination**:

Indicate name and date below.

Per Committee Member_____

Per Committee Member_____

Per Committee Member_____

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