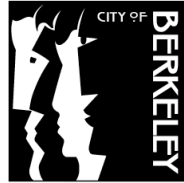


REVISED AGENDA
(REVISED TO INCLUDE TELECONFERENCE LOCATION)



BERKELEY CITY COUNCIL MEETING

Tuesday, January 22, 2019

6:00 PM

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

TELECONFERENCE LOCATION: CAPITOL HILTON, 1001 16TH ST NW,
WASHINGTON DC, 20036

TELECONFERENCE LOCATION: KUVEYT CD. NO:6, REMZI OĞUZ ARIK
MAHALLESİ, 06680 ÇANKAYA/ANKARA, TURKEY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – CHERYL DAVILA

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – RIGEL ROBINSON

DISTRICT 8 – LORI DROSTE

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

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

Preliminary Matters

Roll Call:

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

1. Recognition of Mahealani Uchiyama.

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

Public Comment on Non-Agenda Matters: *Persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the*

City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Consent Calendar

The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.

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

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

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

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

Consent Calendar

1. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,635-N.S. amending the Berkeley Municipal Code to streamline and clarify the permitting process for small businesses in commercial districts by: 1. Reducing the amount of parking required for businesses moving into existing commercial spaces; 2. Simplifying food service categories by reducing them from three to one; 3. Reducing permitting time and costs for small businesses that request a change of use in existing commercial spaces; 4. Clarifying the permit process for new business types that may not be specifically defined in the City’s zoning rules; 5. Making ‘commercial recreation’ uses (such as bowling alleys, miniature golf courses or ping pong clubs) easier to permit in commercial districts; and 6. Streamlining the permit process and providing clear performance standards for restaurants that wish to serve beer and wine.

The ordinance would amend Berkeley Municipal Code Chapters 23E.16, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, and 23E.98.

First Reading Vote: All Ayes.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Jordan Klein, Economic Development, 981-7530

Consent Calendar

- 2. Referral Response: Reclassifying the zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,638-N.S.: a. Rezoning a portion of the project site from Mixed Use – Light Industrial (MU-LI) to West Berkeley Commercial (C-W) (Amendments affect APNs 054-1763-001-03 and 054-1763-010-00); and b. Amending the C-W District development standards to allow for a 4-story / 50-foot tall building on the subject property (Amendments affect APNs 054-1763-001-03, 054-1763-010-00, and 054-1763-003-03).
First Reading Vote: Ayes - Kesarwani, Bartlett, Wengraf, Robinson, Droste, Arreguin; Noes - Davila, Harrison, Hahn.
Financial Implications: See report
Contact: Timothy Burroughs, Planning and Development, 981-7400
- 3. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the Council meetings of November 26, 2018 (special closed), November 27, 2018 (regular), December 4, 2018 (regular), December 6, 2018 (special), and December 11, 2018 (regular).
Financial Implications: None
Contact: Mark Numainville, City Clerk, 981-6900
- 4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 22, 2019**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$9,078,600
Contact: Henry Oyekanmi, Finance, 981-7300
- 5. Authorize Memorandum of Understanding with Alameda County for Winter Relief Program**
From: City Manager
Recommendation: Authorize the City Manager to enter into a Memorandum of Understanding (MOU) through April 30, 2019 with Alameda County for a Winter Relief Program.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400

Consent Calendar

- 6. Revenue Contract: Community Services Block Grant for Calendar Year 2019**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to accept the Community Services Block Grant (CSBG) Contract Number 19F-4001 for the amount of \$266,863 to provide services for low-income people for the period January 1, 2019 to December 31, 2019.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 7. Revenue Grant Agreement: Medi-Cal Administrative Activities Funding from the State of California to Conduct Public Health Promotion Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit grant agreements to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion for Medi-Cal Administrative Activities (MAA) Program for an amount not to exceed \$3,000,000 for period of the agreement, Fiscal Years 2020 through 2022.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 8. Grant Application: California Affordable Housing and Sustainable Communities Infrastructure and Agreements in Connection with Proposed Berkeley Way Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to negotiate, enter into and cause the City to perform its obligations under one or more agreements (including amendments) with the BRIDGE Housing Corporation, Berkeley Food and Housing Project (BFHP), and/or their affiliates (including BRIDGE Berkeley Way LP and BFHP Hope Center LP), relating to a grant application to the California Affordable Housing and Sustainable Communities (AHSC) Program for Berkeley Way project-related transportation and infrastructure improvements, for a total amount up to \$3,800,000 for City-projects, and to accept and perform the grant if awarded.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400; Phillip Harrington, Public Works, 981-6300

Consent Calendar

- 9. Classification and Salary: Public Works Maintenance Superintendent and Equipment Superintendent**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 68,710-N.S. Classification and Salary Resolution for Public Employees Union - Local One, to increase the salary range for Public Works Maintenance Superintendent and Equipment Superintendent, 6.3% and 6.0% respectively, to an hourly salary range of \$55.7482 - \$67.3564 effective January 22, 2019.
Financial Implications: See report
Contact: LaTanya Bellow, Human Resources, 981-6800
- 10. Fee Assessment – State of California Self-Insurance Fund (Workers’ Compensation Program)**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution 68,696-N.S. to authorize payment to the State of California Department of Industrial Relations for Fiscal Year 2019 for administering the Workers’ Compensation Program for an additional amount of \$4,041.84 with a total amount not to exceed of \$223,041.84.
Financial Implications: See report
Contact: LaTanya Bellow, Director of Human Resources, 981-6807
- 11. Contract: Siegel & Strain Architects for Design Services for the Cazadero Camp Jensen Dormitory Replacement Design**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Siegel & Strain Architects in an amount not to exceed \$158,000 to provide design services for the Cazadero Camp Jensen Dormitory Replacement Design Project.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 12. Adopt a Mitigated Negative Declaration for the Berkeley Tuolumne Camp Permit (46690) Project**
From: City Manager
Recommendation: Adopt a Resolution adopting the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Plan (MMRP) for the Berkeley Tuolumne Camp Permit (46690) Project.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700

Consent Calendar

13. Community Conservation Centers, Inc.'s Contractual Relief of its Revenue Share Obligation to the City for the Sale of Recyclable Commodities

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to provide contractual relief to Community Conservation Centers, Inc. (CCC) Recyclable Processing Services Contract, Exhibit B. Section 3.1 "Contractor shall pay City 7.5 percent of annual gross revenue on a monthly basis." The remaining obligation per this Contract is \$1,123,591.87.

Financial Implications: See report

Contact: Phillip Harrington, Public Works, 981-6300

14. Contract: Ghilotti Construction Company for Panoramic Hill Rehabilitation Project

From: City Manager

Recommendation: Adopt a Resolution approving plans and specifications for the Panoramic Hill Rehabilitation Project, Specification No. 18-11180-C (Re-Issued); accepting the bid of Ghilotti Construction Company as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$5,054,873.

Financial Implications: Various Funds - \$5,054,873

Contact: Phillip Harrington, Public Works, 981-6300

15. Contract: TranSystems Corporation for Preliminary Engineering and Environmental Clearance for the Railroad Crossing Safety Improvement/Quiet Zone Project

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with TranSystems Corporation for Preliminary Engineering and Environmental Clearance for the Railroad Crossing Safety Improvement/Quiet Zone project, and any as-needed additional project-related services as directed by the City, for a total not-to-exceed contract amount of \$500,000, for the period February 1, 2019 through December 31, 2019.

Financial Implications: Capital Project Grant Fund - Local - \$500,000

Contact: Phillip Harrington, Public Works, 981-6300

Consent Calendar

- 16. Contracts: On-Call Architectural Services: ELS Architecture and Urban Design; Noll & Tam Architects; and Siegel & Strain Architects**
From: City Manager
Recommendation: Adopt three Resolutions authorizing the City Manager to execute contracts and any amendments with the following firms for on-call architectural design services in support of the City's annual Facilities Capital Improvement Program, each from February 1, 2019 through June 30, 2022:
1. ELS Architecture and Urban Design for an amount not to exceed \$1,700,000.
 2. Noll & Tam Architects for an amount not to exceed \$1,700,000.
 3. Siegel & Strain Architects for an amount not to exceed \$1,700,000.
- Financial Implications:** See report
Contact: Phillip Harrington, Public Works, 981-6300
- 17. Authorization for Additional Civic Arts Commission Meeting in 2019**
From: Civic Arts Commission
Recommendation: Adopt a Resolution authorizing one additional meeting of the Civic Arts Commission in 2019
Financial Implications: None
Contact: Jennifer Lovvorn, Commission Secretary, 981-7530

Council Consent Items

- 18. Support a Green New Deal**
From: Mayor Arreguin, and Councilmembers Davila, Harrison, and Robinson
Recommendation: Adopt a Resolution supporting the development of a Green New Deal, a federal economic stimulus program to address climate change and transform the economy. Send a copy of the Resolution to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and Governor Gavin Newsom.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, 981-7100
- 19. Support of SB 18 – Keep Californians Housed Act**
From: Mayor Arreguin, and Councilmembers Wengraf, Droste, and Hahn
Recommendation: Adopt a Resolution in support of Senate Bill (SB) 18, the Keep Californians Housed Act, introduced by Senator Nancy Skinner. Send a copy of the Resolution to Senator Skinner, Assemblymember Buffy Wicks, and Governor Gavin Newsom.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, 981-7100

Council Consent Items

- 20. 2019 City Council Committee and Regional Body Appointments**
From: Mayor Arreguin
Recommendation: Adopt a Resolution approving the appointment of Council representatives to City Council Standing Policy Committees, Partnership Committees, Regional Bodies, and Council Liaisons for a one-year term from January 2019 to January 2020.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, 981-7100
- 21. Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade**
From: Councilmembers Wengraf, Hahn, Droste, and Kesarwani
Recommendation: Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade, and honor the 46th anniversary of its passage with a proclamation.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

Action Calendar

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

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

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

Action Calendar – Old Business

22. **Single Use Disposable Foodware and Litter Reduction Ordinance** *(Continued from December 11, 2018. Item contains revised material.)*

From: Councilmember Hahn and Mayor Arreguin

Recommendation:

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to:
 - a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”).
 - b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing Reusable Foodware requirements for eating on the premises.
 - c. Create a Reusable Takeout Foodware program for launch three years after the effective date of the Single Use Disposable Foodware and Litter Reduction Ordinance, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste.
 - d. Prior to launch of the Reusable Takeout Foodware program, draft for approval amendments to the Single Use Disposable Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers.
 - e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.
 - f. Prior to January 1, 2022 report to the City Council on progress towards full implementation of and compliance with the Single Use Disposable Foodware and Litter Reduction Ordinance and these referrals.
3. Refer to the City Manager to determine funding and staffing needs and sources of funds to implement each program/phase. Consider and suggest implementation alternatives to achieve similar results at lower cost to the City, if any. Submit recommended alternatives to the Zero Waste Commission and City Council for consideration, and funding allocations or requests to the budget process.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, 981-7150

23. **Refer to the City Manager to consider boycotting Amazon for its role in tracking immigrants in cooperation with ICE and abusive working conditions and its labor practices toward its employees** *(Continued from November 27, 2018. Item contains revised material.)*

From: Councilmembers Worthington and Davila

Recommendation: Refer to the City Manager to consider the City of Berkeley boycotting Amazon and refrain from using its services to purchase goods for city use.

Financial Implications: Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action Calendar – Old Business

- 24a. Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties** *(Continued from December 11, 2018. Item contains supplemental material.)*

From: Community Environmental Advisory Commission

Recommendation: Since the drought-storm-flooding cycle is predicted to get worse, refer to the City Manager to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period. The City Manager and staff should consider the following: - Comply beyond the State and Alameda County current requirements; -Encourage the treating and detaining of runoff up to approximately the 85th per-centile of water deposited in a 24-hour period; -Establish site design measures that include minimizing impervious surfaces; -Require homeowners to include flooding offsets in preparing properties for sale; - Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff; -Require abatements for newly paved areas over a specific size; -Make exceptions for properties that offer significantly below-market rent or sale prices; -Authorize a fee for all new construction or for title transfer to cover the cost of re-quired compliance inspections. -Incorporate these measures for private property with similar measures for Public Works, while coordinating with EBMUD, BUSD, UCB and LBNL.

Financial Implications: See report

Contact: Viviana Garcia, Commission Secretary, 981-7460

- 24b. Companion Report to Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties** *(Continued from December 11, 2018.)*

From: City Manager

Recommendation: Express appreciation for the intent of the Community Environmental Advisory Commission (CEAC) recommendation to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period, and allow staff to continue existing efforts to implement Municipal Regional Stormwater Permit regulations in coordination with the 14 other local governments and agencies that participate in the Alameda Countywide Clean Water Program.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Phillip Harrington, Public Works, 981-6300

Action Calendar – Old Business

- 25a. Referral Response: Berkeley Single Use Foodware and Litter Reduction Ordinance** *(Continued from December 11, 2018.)*
From: Zero Waste Commission
Recommendation: Review the results of the Zero Waste Commission’s community outreach and analysis provided in response to Council’s referral and consider incorporating the Zero Waste Commission recommendations for improvements into the referred draft proposed Berkeley Single Use Foodware and Litter Reduction Ordinance
Financial Implications: See report
Contact: Heidi Obermeit, Commission Secretary, 981-6300
- 25b. Companion Report: Referral Response: Proposed Single Use Foodware and Litter Reduction Ordinance** *(Continued from December 11, 2018.)*
From: City Manager
Recommendation: Staff appreciates the Zero Waste Commission’s diligent and thoughtful work and requests that Council refer their recommendations for the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance to the City Manager to review, to quantify the potential impacts, and to report back to Council with an analysis.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, 981-6300
- 26. Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program** *(Continued from December 11, 2018.)*
From: Councilmembers Bartlett, Worthington, and Davila
Recommendation: That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.
Financial Implications: Minimal
Contact: Ben Bartlett, Councilmember, District 3, 981-7130

Action Calendar – New Business

27a. Allocation of \$4.75 Million Over Two Years, FY20 and FY21, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs) From: Sugar Sweetened Beverage Product Panel of Experts

Recommendation:

1. Adopt a Resolution allocating \$4.75 million from the General Fund in FY20 (July 1, 2019 through June 30, 2020) and FY21 (July 1, 2020 through June 30, 2021) that shall be invested in a grant program administered and coordinated by the Berkeley Public Health Division consistent with the SSBPPE's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the effects of SSB consumption. The total of \$4.75 million will be distributed in two installments of \$2.375 million per year for FY20 and FY21. In each of these years, the funds will be distributed as follows: a. Direct the City Manager to award up to 40% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding. b. Direct the City Manager to award at least 40% of the allocated funds through a RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants.

2. Direct the City Manager to utilize 20% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data resulting from the SSBPPE funding program. A comprehensive and sustainable media campaign that coordinates with all regional soda tax efforts will be managed by the BPHD with 10% of this portion of the allocation.

Financial Implications: See report

Contact: Dechen Tsering, Commission Secretary, 981-5300

27b. Companion Report: Allocation of \$4.75 Million Over Two Years, FY20 and FY21, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs).

From: City Manager

Recommendation: Accept the Sugar Sweetened Beverage Product Panel of Experts (SSBPPE) report with the clarifications outlined in the report considered.

Financial Implications: See report

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

Information Reports

28. **LPC NOD: 1 and 5 Canyon Road, #LMIN 2018-0005**
From: City Manager
Contact: Timothy Burroughs, Planning and Development, 981-7400
29. **LPC NOD: 2415 Blake Street, #LMIN 2018-0004**
From: City Manager
Contact: Timothy Burroughs, Planning and Development, 981-7400
30. **Referral Response: Removing Plastic Microfibers from the Water Supply**
From: Community Environmental Advisory Commission
Contact: Viviana Garcia, Commission Secretary, 981-7460
31. **City Auditor's Office 2018 Peer Review Results**
From: Auditor
Contact: Jenny Wong, Auditor, 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.*

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33), via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx> and KPFB Radio 89.3.

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

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

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <http://www.cityofberkeley.info>.

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

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

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

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



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

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*I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 17, 2019.*

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

Mark Numainville, City Clerk

## Communications

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

### **Item #22: Single Use Disposable Foodware and Litter Reduction Ordinance**

1. Stuart Pawsey
2. Adam Stemmler, on behalf of the Farm League Restaurant Group

### **Item #27a: Allocation of \$4.75 Million Over Two Years, FY20 and FY21, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSB)**

3. Jezra Thompson

### **Cannabis**

4. Thomas Reed
5. Jacob Wong
6. Jessica Gohlke

7. James Anstey
8. Sara Weinberg
9. Elijah Liedeker

### **Homeless Activists Harassing Berkeley Police (Video)**

10. August Moon

### **Homeless Issues**

11. Eric Friedman
12. Christine Schwartz
13. Marcia Poole
14. Moni Law
15. Autumn Moon
16. Rachel Beth
17. Barryett Enge
18. Richard James
19. Joe Vollono (2)
20. Jessica Behrman

### **RV Parking**

21. Linda Maio
22. Autumn Moon
23. Nicholas Ohler
24. Christopher Brown

### **IKE Kiosks**

25. Vivian Warkentin
26. Carol Denney (3)
27. Becca Freed

### **Marina Crisis**

28. Eric Friedman

### **Electric Scooters**

29. Jenny Craik

### **Street Paving**

30. Dorothea Dorenz
31. Eric Friedman (2)
32. Mary Ann Brewin
33. Evan McDonald

### **Tobacco/Smoking**

34. Pauline Bondonno
35. Carol Denney (3)
36. Omar Yacoubi

**Trees/Traffic Circles**

- 37. John Steere, President Partner for Parks
- 38. Nancy Carleton
- 39. Karl Reeh (2)
- 40. Sally Hughes

**Underground Study**

- 41. Paul Casperson and Marilyn Pollack
- 42. David Turnoff
- 43. Susie Goodin

**Okinawa Landfill**

- 44. Diana Bohn

**Shellmound – West Berkeley**

- 45. Indian People Organizing for Change

**Internet Access at BUSD City Council Meetings**

- 46. Christine Schwartz
- 47. Emilie Raguso

**Measure O & P**

- 48. Sophia DeWitt
- 49. Todd Andrew

**2-1-1 Monthly Report for November 2018**

- 50. Eden I&R, Inc.(2)

**LPC Letter, re: Berkeley Community Theater**

- 51. Steven Finacom, Chairperson LPC

**Professor Hatem Bazian**

- 52. Margy Wilkinson

**CPUC Fire Mitigation Input**

- 53. Paul Degenkolb, Chairperson, Disaster & Fire Safety Commission

**Unaffordable Places to Live**

- 54. Margy Wilkison

**Orbison Lawsuit**

- 55. Pil Orbison

**PRC – Fair/Impartial Policing**

- 56. Katherine Lee



**Alameda Mental Health Update**

57. Christine Schwartz

**Save the Berkeley Animal Rights Center**

58. Wayne Hsiung

**Climate Emergency**

59. Kelly Hammargren

**Berkeley Way Project**

60. Erika Shore

**CalABLE Launch**

61. Blake Johnson

**Deemed Approved Ordinance Recommendation**

62. Nuha Khalfay, Chair, Community Health Commission

**Save Our Community Garden**

63. Sarah Garrett

**BPD Investigation**

64. Moni Law

65. Chief Greenwood (3)

66. Genevieve Wilson

**CoLiving at 3000 Shattuck**

67. Nathan George

68. Ian Wulfson

69. Mariana Almeida

**Seize House of Black Veteran**

70. Margy Wilkinson

**PG&E Letter Response to Item #21 of the 11/27 Agenda**

71. Janice Berman, Director, Grid Edge, PG&E

**IHSS Letter Response to Item #16 of the 11/13 Agenda**

72. Debbi Thomson, Deputy Director of IHSS Adult Programs Division

**Supplemental Communications and Reports**

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

- **Supplemental Communications and Reports 1**

Available by 5:00 p.m. five days prior to the meeting.

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

ORDINANCE NO. 7,635-N.S.

AMENDMENT TO MODIFY BERKELEY MUNICIPAL CODE SECTIONS 23E.16.040.A, 23E.28.130, 23E.36.030.A, 23E.36.080.B, 23E.40.030, 23E.40.080.B, 23E.44.030, 23E.44.040.A, 23E.48.030, 23E.48.080.B, 23E.52.030, 23E.52.060.D, 23E.52.080.B, 23E.56.030.A, 23E.56.060.C, 23E.60.030, 23E.60.060.D, 23E.60.080.B, 23E.64.030.A, 23E.64.080.B, 23E.64.090.H, 23E.68.030.A, 23E.68.040, 23E.68.090.C, AND 23E.98.050 TO MODIFY PERMITTING REGULATIONS FOR BUSINESSES IN COMMERCIAL DISTRICTS

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

Section 1. That Berkeley Municipal Code Section 23D.16.040.A is amended to read as follows:

**23E.16.040 Alcoholic Beverages**

A. No alcoholic beverage sales or alcoholic beverage service may be commenced or increased in any way unless authorized by a Use Permit, except that:

- 1. In Commercial Districts, Food Service Establishments with incidental beer and/or wine service for seated, onsite consumption may be authorized by a Zoning Certificate subject to the following alcoholic beverage service performance standards:

a. Licensing

- 1) The Food Service Establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control; and
- 2) Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations prior to issuance or transfer of a business license at this location.

b. Service

- 1) Beer and wine beverage service shall be “incidental” to the primary food service use, as defined in Berkeley Municipal Code (BMC) Zoning Ordinance Section 23F.04.010 Definitions;
- 2) Beer and wine service incidental to seated food service shall only be allowed at a “bona fide eating place” making “actual and substantial sales of meals” as determined and required by the California Department of Alcohol Beverage Control (ABC);

- 3) The sale of beer and wine for off-site consumption is prohibited;
- 4) Employees shall not serve beer or wine to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol;
- 5) All beer and wine served to patrons must be served in durable restaurant tableware. No beer or wine may be distributed in its original bottle or can, or in any other potentially disposable container;
- 6) There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption; and
- 7) Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.

c. Operations

- 1) The food service establishment must operate at least five days a week;
- 2) The service of beer and wine shall be limited to normal meal hours (per ABC) during the restaurant's hours of operation;
- 3) During operating hours, 100% of the service area shall be designed and used for meal service and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public;
- 4) At no time shall the operator rent the restaurant space to a third-party promoter;
- 5) The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:
  - Signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets.
  - Surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity.
- 6) The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk; and
- 7) The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.

d. Advertising

- 1) There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this code; and
- 2) Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.

e. Training

- 1) Crime Prevention through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service; and
  - 2) All employees selling and/or serving beer and wine, or directly supervising such sales and/or service, shall comply with BMC 9.84.030 (Responsible Beverage Service Training) and complete the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 90 days of employment at the establishment. Employees who have completed the course within the last twelve (12) months shall be exempt from this requirement.
2. In all other non-residential districts, Food Service Establishments with incidental beer and/or wine service for seated, onsite consumption may be authorized by an Administrative Use Permit.

Section 2. That Berkeley Municipal Code Section 23E.28.130 is amended to read as follows:

**23E.28.130 Parking Requirements for Change of Use and Expansions of Buildings in C, M, MM, MU and R-SMU Districts**

A. No change of use shall be required to meet the off-street parking requirements of either the district or this chapter unless 1) the structure has been expanded to include new floor area or 2) in the M, MM, MU and R-SMU districts, the use is changed to one with a higher numerical parking standard than the district minimum. When the new use has the same or a lower numerical parking standard than the previous use, the new use shall not be required to meet the off-street parking requirements of the district and this chapter.

B. No new floor area shall be created through building expansions, unless it satisfies the parking requirements of the district and this chapter. However, the Zoning Officer may modify the parking requirements for new floor area for expansions of existing buildings with an Administrative Use Permit, subject to the findings in Section 23E.28.140 or 23E.28.145.

C. In the M, MM, MU and R-SMU districts, for a change of use of existing floor area where the new use has a higher numerical parking standard than the existing use as listed in the district provisions, the following applies:

1. The new use must provide the incremental difference between the two numerical parking standards, which must meet all other parking requirements.
2. A higher numerical parking standard may be reduced to the district minimum and other parking requirements may be modified with an Administrative Use Permit, subject to the findings in Section 23E.28.140 or 23E.28.145. If the new use requires a Use Permit, the Zoning Adjustments Board shall approve, deny or modify the request, subject to the findings in Section 23E.28.140 or 23E.28.145. If the numerical parking reduction is approved, no additional off-street parking is required.

Section 3. That Berkeley Municipal Code Section 23E.36.030.A is amended to read as follows:

**23E.36.030 Uses Permitted**

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

| Table 23E.36.030         |                |                               |
|--------------------------|----------------|-------------------------------|
| Use and Required Permits |                |                               |
| Use                      | Classification | Special Requirements (if any) |
| Retail Sales             |                |                               |

| <b>Table 23E.36.030</b>                                                |                       |                                                                                                                                                                                                 |
|------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                        |                       |                                                                                                                                                                                                 |
| <b>Use</b>                                                             | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                            |
| All Retail Sales Uses, except those listed below                       | ZC*                   | As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)                                                                                                       |
| Alcoholic Beverage Retail Sales including Liquor Stores and Wine Shops | UP(PH)                | Includes sale for off-site consumption at restaurants<br>Prohibited within the University Avenue Strategic Plan Overlay (unless in conjunction with a restaurant or general food product store) |
| Department Stores                                                      | ZC*                   |                                                                                                                                                                                                 |
| Firearm/Munitions Businesses                                           | UP(PH)                | Prohibited on any property devoted to residential use                                                                                                                                           |
| Pawn Shops, including Auction Houses                                   | UP(PH)                | Prohibited within the University Avenue Strategic Plan Overlay                                                                                                                                  |
| Pet Stores, including Sales and Grooming of Animals (but not Boarding) | UP(PH)                |                                                                                                                                                                                                 |
| Smoke Shops                                                            | UP(PH)                | Prohibited if within 1,400 feet of a school or public park                                                                                                                                      |
| <b>Personal and Household Services</b>                                 |                       |                                                                                                                                                                                                 |
| All Personal and Household Services, except those listed below         | ZC*                   | As defined in Sub-title F, except those otherwise listed (does not include Massage)                                                                                                             |
| Laundromats                                                            | AUP                   |                                                                                                                                                                                                 |
| Veterinary Clinics, including Pet Hospitals                            | UP(PH)                |                                                                                                                                                                                                 |
| <b>Offices</b>                                                         |                       |                                                                                                                                                                                                 |
| Financial Services, Retail (Banks)                                     | AUP                   |                                                                                                                                                                                                 |

| <b>Table 23E.36.030</b>                                                                            |                       |                                                                  |
|----------------------------------------------------------------------------------------------------|-----------------------|------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                    |                       |                                                                  |
| <b>Use</b>                                                                                         | <b>Classification</b> | <b>Special Requirements (if any)</b>                             |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents                               | ZC*                   |                                                                  |
| Medical Practitioners, including Holistic Health and Mental Health Practitioners                   | ZC*                   | Subject to parking requirements; see Table 23E.36.080            |
| Non-Chartered Financial Institutions                                                               | UP(PH)                | Subject to additional requirements; see Table 23E.36.080         |
| Other Professionals, and Government, Institutions, Utilities                                       | ZC*                   |                                                                  |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>                         |                       |                                                                  |
| Adult-oriented Businesses                                                                          | UP(PH)                | Subject to additional requirements; see Section 23E.16.030       |
| Alcoholic Beverage Service of beer and wine incidental to seated food service                      | ZC                    | For on-site consumption only                                     |
| Alcoholic Beverage Service, including Bars, Cocktail Lounges, and Taverns                          | UP(PH)                | Includes service of distilled spirits incidental to food service |
| Amusement Device Arcades                                                                           | UP(PH)                | Subject to additional requirements; see Section 23E.16.050       |
| Commercial Recreation Center<br>Under 5,000 s.f.<br>Between 5,000--10,000 s.f.<br>Over 10,000 s.f. | ZC<br>AUP<br>UP(PH)   | Outdoor use requires UP(PH)                                      |



| Table 23E.36.030                                                       |                |                                                                                                                                                                                                                                                     |
|------------------------------------------------------------------------|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                               |                |                                                                                                                                                                                                                                                     |
| Use                                                                    | Classification | Special Requirements (if any)                                                                                                                                                                                                                       |
| Dance, Exercise, Martial Arts and Music Studios                        | ZC*            |                                                                                                                                                                                                                                                     |
| Entertainment Establishments, including Nightclubs                     | UP(PH)         |                                                                                                                                                                                                                                                     |
| Food Service Establishments<br><br>Under 1,500 s.f.<br>Over 1,500 s.f. | ZC<br>AUP      | Food Service Establishments that exclusively sell food for offsite consumption are prohibited at any location on University Avenue between Oxford Street and Martin Luther King Jr. Way until a Downtown Retail Plan is adopted by the City Council |
| Group Class Instruction for Business, Vocational or Other Purposes     | ZC*            |                                                                                                                                                                                                                                                     |
| Gyms and Health Clubs<br><br>Under 7,500 s.f.                          | AUP<br>ZC*     |                                                                                                                                                                                                                                                     |
| Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels        | UP(PH)         | Subject to parking requirements; see Section 23E.36.080                                                                                                                                                                                             |
| Motels, Tourist                                                        | UP(PH)         | Subject to parking requirements; see Section 23E.36.080                                                                                                                                                                                             |

| <b>Table 23E.36.030</b>                                             |                       |                                                                                                 |
|---------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                     |                       |                                                                                                 |
| <b>Use</b>                                                          | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                            |
| Theaters, including Motion Pictures and Stage Performance           | UP(PH)                |                                                                                                 |
| <b>Automobile and Other Vehicle Oriented Uses</b>                   |                       |                                                                                                 |
| Automobile Parts Stores                                             | ZC*                   | Excluding service of auto parts. Prohibited within the University Avenue Strategic Plan Overlay |
| Automobile Repair and Service, including Parts Service              | AUP                   | Prohibited within the University Avenue Strategic Plan Overlay                                  |
| Automobile Sales and Rentals                                        | AUP                   | Prohibited within the University Avenue Strategic Plan Overlay                                  |
| Automobile Washes, Mechanical or Self-Service                       | UP(PH)                | Prohibited within the University Avenue Strategic Plan Overlay                                  |
| Automobile Wrecking Establishments                                  | Prohibited            |                                                                                                 |
| Gasoline/Automobile Fuel Stations                                   | UP(PH)                |                                                                                                 |
| Motorcycle Stores, including Sales and/or Service                   | UP(PH)                | Prohibited within University Avenue Strategic Plan Overlay                                      |
| Recreational Vehicle and Trailers Sales and Rental, including Boats | AUP                   | Prohibited within University Avenue Strategic Plan Overlay                                      |
| Tire Sales/Service Stores                                           | UP(PH)                | Prohibited within University Avenue Strategic Plan Overlay                                      |
| <b>Parking, Outdoor and Exterior Service Window Uses</b>            |                       |                                                                                                 |
| Automatic Teller Machines                                           | AUP                   | Exterior and when part of a Retail Financial Service                                            |

| <b>Table 23E.36.030</b>                        |                       |                                                                                                                                        |
|------------------------------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                |                       |                                                                                                                                        |
| <b>Use</b>                                     | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                   |
| Drive-in Uses                                  | UP(PH)                | Providing service to customers in their cars. See definition in Subtitle F. Prohibited within University Avenue Strategic Plan Overlay |
| Activities or Storage outside of a building    |                       |                                                                                                                                        |
| Not abutting R-District                        | AUP                   |                                                                                                                                        |
| When abutting R-District                       | UP(PH)                |                                                                                                                                        |
| Parking Lots                                   |                       |                                                                                                                                        |
| Five or fewer Off-street Parking Spaces        | ZC                    |                                                                                                                                        |
| More than five Off-street Parking Spaces       | UP(PH)                |                                                                                                                                        |
| Recycling Redemption Centers                   | AUP                   |                                                                                                                                        |
| Outdoor Cafe Seating                           |                       |                                                                                                                                        |
| When seating not abutting R-District           | ZC                    |                                                                                                                                        |
| When seating abutting R-District               | AUP                   |                                                                                                                                        |
| <b>Combination Commercial/Residential Uses</b> |                       |                                                                                                                                        |
| Live/Work Units                                |                       |                                                                                                                                        |
| Not requiring a UP under Chapter 23E.20        | ZC                    |                                                                                                                                        |
| Requiring a UP under Chapter 23E.20            | UP(PH)                |                                                                                                                                        |

| <b>Table 23E.36.030</b>                                       |                       |                                                                                                                                                                                                                                                                                                                                                                                                    |
|---------------------------------------------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                               |                       |                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Use</b>                                                    | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                                                                                                                                                                                               |
| Mixed Use Developments<br>(Residential/Commercial)            | UP(PH)                | Subject to Sections 23E.36.070.D and 23E.36.080.E. Within the University Avenue Strategic Plan Overlay areas, the following uses are not allowed on the ground floor of a Mixed Use building unless a Use Permit is issued pursuant to Sections 23E.36.090.A and B: residential units and uses (other than parking) which serve the residential uses, e.g., leasing and management of the building |
| <b>Uses Incidental to a Permitted Use</b>                     |                       |                                                                                                                                                                                                                                                                                                                                                                                                    |
| Amusement Devices (up to three)                               | AUP                   |                                                                                                                                                                                                                                                                                                                                                                                                    |
| Food or Beverage for Immediate Consumption                    | ZC                    |                                                                                                                                                                                                                                                                                                                                                                                                    |
| Live Entertainment<br>Unamplified                             | ZC                    |                                                                                                                                                                                                                                                                                                                                                                                                    |
| Amplified                                                     | AUP                   |                                                                                                                                                                                                                                                                                                                                                                                                    |
| Manufacturing Uses                                            | AUP                   |                                                                                                                                                                                                                                                                                                                                                                                                    |
| Storage of Goods (over 25% of gross floor area)               | AUP                   |                                                                                                                                                                                                                                                                                                                                                                                                    |
| Wholesale Activities                                          | AUP                   |                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Uses Permitted in Residential Districts</b>                |                       |                                                                                                                                                                                                                                                                                                                                                                                                    |
| Accessory Dwelling Unit in compliance with Section 23C.24.050 | ZC                    |                                                                                                                                                                                                                                                                                                                                                                                                    |
| Accessory Dwelling Unit that does not comply with             | AUP                   | Subject to making applicable findings in Section 23C.24.070                                                                                                                                                                                                                                                                                                                                        |

| <b>Table 23E.36.030</b>                                           |                       |                                                                                                                                                                                                                |
|-------------------------------------------------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                   |                       |                                                                                                                                                                                                                |
| <b>Use</b>                                                        | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                           |
| requirements under Section 23C.24.050                             |                       |                                                                                                                                                                                                                |
| Accessory Uses and Structures                                     | Per R-3 District      | See Table 23D.36.030                                                                                                                                                                                           |
| Accessory Buildings and Structures with Urban Agriculture         | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060                                                                                                                                                     |
| Short-Term Rental                                                 | ZC                    | Subject to requirements of Chapter 23C.22                                                                                                                                                                      |
| Child Care Centers                                                | UP(PH)                |                                                                                                                                                                                                                |
| Clubs, Lodges                                                     | UP(PH)                |                                                                                                                                                                                                                |
| Community Centers                                                 | UP(PH)                |                                                                                                                                                                                                                |
| Dwelling Units, subject to R-3 Standards                          | UP(PH)                | Standards may be modified under Section 23E.36.070.E. Residential-only projects are prohibited within the University Avenue Node Overlay areas, and permitted within University Avenue Overlay Mixed Use areas |
| Group Living Accommodations subject to R-3 Standards              | UP(PH)                | Standards may be modified under Section 23E.36.070.E                                                                                                                                                           |
| Hospitals                                                         | UP(PH)                | Subject to parking requirements; see Section 23E.36.080                                                                                                                                                        |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels | UP(PH)                |                                                                                                                                                                                                                |
| Libraries                                                         | UP(PH)                | Subject to parking requirements; see Section 23E.36.080                                                                                                                                                        |
| Nursing Homes                                                     | UP(PH)                | Subject to parking requirements; see Section 23E.36.080                                                                                                                                                        |
| Parks and Playgrounds                                             | ZC                    |                                                                                                                                                                                                                |

| <b>Table 23E.36.030</b>              |                       |                                                                                                                                                                                 |
|--------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>      |                       |                                                                                                                                                                                 |
| <b>Use</b>                           | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                            |
| Public Safety and Emergency Services | UP(PH)                |                                                                                                                                                                                 |
| Religious Assembly Uses              | UP(PH)                |                                                                                                                                                                                 |
| Schools, Public or Private           | UP(PH)                |                                                                                                                                                                                 |
| Senior Congregate Housing            |                       | Changes of use from an existing dwelling unit                                                                                                                                   |
| Six or fewer people                  | ZC                    |                                                                                                                                                                                 |
| Seven or more persons                | AUP                   |                                                                                                                                                                                 |
| New Construction                     | UP(PH)                |                                                                                                                                                                                 |
| <b>Miscellaneous Uses</b>            |                       |                                                                                                                                                                                 |
| Automatic Teller Machines            | UP(PH)                | When not a part of a Retail Financial Service                                                                                                                                   |
| Cafeteria, Employee or Residential   | UP(PH)                |                                                                                                                                                                                 |
| Cemeteries, Crematories, Mausoleums  | Prohibited            |                                                                                                                                                                                 |
| Columbaria                           | AUP                   | Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building |
| Circus or Carnival                   | UP(PH)                |                                                                                                                                                                                 |
| Commercial Excavation                | UP(PH)                | Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas                                                        |
| Dry Cleaning and Laundry Plants      | UP(PH)                |                                                                                                                                                                                 |
| Emergency Shelter                    |                       | See Chapter 23C.10.                                                                                                                                                             |

| Table 23E.36.030                                                                                                                                              |                |                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|----------------------------------------------------------------|
| Use and Required Permits                                                                                                                                      |                |                                                                |
| Use                                                                                                                                                           | Classification | Special Requirements (if any)                                  |
| Up to 25 beds                                                                                                                                                 | ZC             |                                                                |
| More than 25 beds                                                                                                                                             | UP(PH)         |                                                                |
| Kennels or Pet Boarding                                                                                                                                       | Prohibited     |                                                                |
| Laboratories, Testing<br>(including Cannabis Testing)                                                                                                         | AUP            |                                                                |
| Mortuaries                                                                                                                                                    | UP(PH)         |                                                                |
| Public Utility Substations, Tanks                                                                                                                             | UP(PH)         |                                                                |
| Radio, Television, or<br>Audio/Sound Recording and/or<br>Broadcast Studios                                                                                    | UP(PH)         |                                                                |
| Warehouses or Storage<br>including Mini-storage<br>Warehouses                                                                                                 | UP(PH)         | Prohibited within the University Avenue Strategic Plan Overlay |
| Wireless Telecommunications<br>Facilities                                                                                                                     |                |                                                                |
| Microcell Facilities,<br>Modifications to Existing<br>Sites, and Additions to<br>Existing Sites When the Site<br>Is Not Adjacent to a<br>Residential District | AUP            | Subject to the requirements of Section 23C.17.100              |
| All Other Telecommunication<br>Facilities                                                                                                                     | UP(PH)         | Subject to the requirements and findings of Section 23C.17.100 |
| Urban Agriculture                                                                                                                                             |                | 23C.26                                                         |

| Table 23E.36.030                             |                                                                       |                               |
|----------------------------------------------|-----------------------------------------------------------------------|-------------------------------|
| Use and Required Permits                     |                                                                       |                               |
| Use                                          | Classification                                                        | Special Requirements (if any) |
| Low-Impact Urban<br>Agriculture (LIUA)       | ZC                                                                    |                               |
| High-Impact Urban<br>Agriculture (HIUA)      | AUP                                                                   |                               |
| Legend:                                      |                                                                       |                               |
| ZC – Zoning Certificate                      | *Change of Use of floor area over 3,000 sq. ft. shall require an AUP. |                               |
| AUP – Administrative Use Permit              |                                                                       |                               |
| UP(PH) – Use Permit, public hearing required |                                                                       |                               |
| Prohibited – Use not permitted               |                                                                       |                               |
|                                              |                                                                       |                               |

Section 4. That Berkeley Municipal Code Section 23E.36.080.B is amended to read as follows:

**23E.36.080 Parking -- Number of Spaces**

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.36.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area.



| Table 23E.36.080                                              |                                                                                     |
|---------------------------------------------------------------|-------------------------------------------------------------------------------------|
| Parking Required                                              |                                                                                     |
| Use                                                           | Number of spaces                                                                    |
| Hospitals                                                     | One per each four beds plus one per each three employees                            |
| Hotels                                                        | One per each three guest/sleeping rooms or suites plus one per each three employees |
| Libraries                                                     | One per 500 sq. ft. of floor area that is publicly accessible                       |
| Medical Practitioner Offices                                  | One per 300 sq. ft. of floor area                                                   |
| Motels                                                        | One per each guest/sleeping room plus one space for owner or manager*               |
| Residential Uses, Nursing Homes                               | Refer to R-3 Standards, Section 23D.36.080                                          |
| *Required parking shall be on same lot as building it serves. |                                                                                     |

Section 5. That Berkeley Municipal Code Section 23E.40.030 is amended to read as follows:

**23E.40.030 Uses Permitted**

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

| Table 23E.40.030         |                |                               |
|--------------------------|----------------|-------------------------------|
| Use and Required Permits |                |                               |
| Use                      | Classification | Special Requirements (if any) |
| Retail Sales             |                |                               |

| <b>Table 23E.40.030</b>                                                |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                        |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Use</b>                                                             | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                                                                                                                                                                                                |
| All Retail Sales Uses, except those listed below                       | ZC*                   | As defined in Sub-title F, except otherwise listed. (Does not include Video Rental Stores)                                                                                                                                                                                                                                                                                                          |
| Alcoholic Beverage Retail Sales including liquor stores and wine shops | UP(PH)                | Includes sale for off-site consumption at restaurants                                                                                                                                                                                                                                                                                                                                               |
| Department Stores<br><br>Over 3,000 s.f.                               | AUP<br><br>Prohibited |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Drugstores                                                             | ZC*                   | A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located. |
| Firearm/Munitions Businesses                                           | UP(PH)                | Prohibited on any property devoted to residential use                                                                                                                                                                                                                                                                                                                                               |
| Pawn Shops, including Auction Houses                                   | Prohibited            |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Pet Stores, including Sales and Grooming of Animals (but not Boarding) | UP(PH)                |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Smoke Shops                                                            | UP(PH)                | Prohibited if within 1,400 feet of a school or public park                                                                                                                                                                                                                                                                                                                                          |
| <b>Personal and Household Services</b>                                 |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
| All Personal and Household Services, except those listed below         | ZC*                   | As defined in Sub-title F, except those otherwise listed (does not include Massage)                                                                                                                                                                                                                                                                                                                 |

| <b>Table 23E.40.030</b>                                                         |                       |                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                 |                       |                                                                                                                                                                                                                           |
| <b>Use</b>                                                                      | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                      |
| Laundromats                                                                     | UP(PH)                |                                                                                                                                                                                                                           |
| Veterinary Clinics, including Pet Hospitals                                     | UP(PH)                |                                                                                                                                                                                                                           |
| <b>Offices</b>                                                                  |                       |                                                                                                                                                                                                                           |
| Financial Services, Retail (Banks)                                              | UP(PH)                |                                                                                                                                                                                                                           |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents            | ZC*                   | When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area |
| Non-Chartered Financial Institutions                                            | Prohibited            |                                                                                                                                                                                                                           |
| Medical Practitioners including Holistic Health and Mental Health Practitioners | AUP                   | Subject to additional parking requirements under Section 23E.40.080.B                                                                                                                                                     |
| Other Professionals and Government, Institutions, Utilities                     | AUP                   | When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area |
| <b>Food and Alcohol Service, Lodging, Entertainment and Assembly Uses</b>       |                       |                                                                                                                                                                                                                           |
| Adult-oriented Businesses                                                       | Prohibited            |                                                                                                                                                                                                                           |
| Alcoholic Beverage Service of beer and wine incidental to seated food service   | ZC                    | For on-site consumption only                                                                                                                                                                                              |

| Table 23E.40.030                                                         |                |                                                                                                                                                   |
|--------------------------------------------------------------------------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                 |                |                                                                                                                                                   |
| Use                                                                      | Classification | Special Requirements (if any)                                                                                                                     |
| Alcoholic Beverage Service, including Bars, Cocktail Lounges and Taverns | UP(PH)         | Includes service of distilled spirits incidental to food service                                                                                  |
| Amusement Device Arcades                                                 | Prohibited     |                                                                                                                                                   |
| Commercial Recreation Center<br>Under 3,000 s.f.<br>Over 3,000 s.f.      | AUP<br>UP(PH)  | Outdoor use requires UP(PH)                                                                                                                       |
| Dance, Exercise, Martial Arts and Music Studios                          | ZC*            |                                                                                                                                                   |
| Entertainment Establishments                                             | UP(PH)         | Includes Nightclubs                                                                                                                               |
| Food Service Establishments<br><br>Under 1,000 s.f.<br>Over 1,000 s.f.   | ZC<br>AUP      | Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property. |
|                                                                          |                |                                                                                                                                                   |

| Table 23E.40.030                                                   |                |                                                |
|--------------------------------------------------------------------|----------------|------------------------------------------------|
| Use and Required Permits                                           |                |                                                |
| Use                                                                | Classification | Special Requirements (if any)                  |
| Group Class Instruction for Business, Vocational or Other Purposes | AUP            |                                                |
| Gyms and Health Clubs                                              | ZC*            |                                                |
| Hotels, Tourist                                                    | UP(PH)         | Includes Inns, Bed and Breakfasts and Hostels  |
| Motels, Tourist                                                    | Prohibited     |                                                |
| Theaters                                                           | UP(PH)         | Includes Motion Pictures and Stage Performance |
| Automobile and Other Vehicle Oriented Uses                         |                |                                                |
| Automobile Parts Stores                                            | ZC*            | Excluding service of auto parts                |
| Automobile Repair and Service                                      | Prohibited     | Includes Parts Service                         |
| Automobile Sales and Rentals                                       | Prohibited     |                                                |
| Automobile Washes, Mechanical or Self-Service                      | Prohibited     |                                                |
| Automobile Wrecking Establishments                                 | Prohibited     |                                                |
| Gasoline/Automobile Fuel Stations                                  | UP(PH)         |                                                |
| Motorcycle Stores                                                  | Prohibited     | Includes Sales and/or Service                  |
| Recreational Vehicle and Trailers Sales and Rental                 | Prohibited     | Includes Boats                                 |
| Tire Sales/Service Stores                                          | Prohibited     |                                                |
| Parking, Outdoor and Exterior Service Window Uses                  |                |                                                |

| Table 23E.40.030                                |                |                                                                            |
|-------------------------------------------------|----------------|----------------------------------------------------------------------------|
| Use and Required Permits                        |                |                                                                            |
| Use                                             | Classification | Special Requirements (if any)                                              |
| Activities or Storage Outside of a building     |                |                                                                            |
| Not abutting R-District                         | AUP            |                                                                            |
| When abutting R-District                        | UP(PH)         |                                                                            |
| Automatic Teller Machines                       | UP(PH)         | Exterior and when part of a Retail Financial Service                       |
| Drive-in Uses                                   | Prohibited     | Providing service to customers in their cars. See definition in Subtitle F |
| Parking Lots                                    | UP(PH)         |                                                                            |
| Recycling Redemption Centers                    | AUP            |                                                                            |
| Outdoor Cafe Seating                            |                |                                                                            |
| When seating not abutting R-District            | ZC             |                                                                            |
| When seating abutting R-District                | AUP            |                                                                            |
| <b>Combination Commercial/Residential Uses</b>  |                |                                                                            |
| Live/Work Units                                 |                |                                                                            |
| Not requiring a UP under Chapter 23E.20         | ZC             |                                                                            |
| Requiring a UP under Chapter 23E.20             | UP(PH)         |                                                                            |
| Mixed Use Developments (Residential/Commercial) | UP(PH)         | Subject to the standards under Section 23E.40.070.D                        |
| <b>Uses Incidental to a Permitted Use</b>       |                |                                                                            |

| <b>Table 23E.40.030</b>                                                                 |                       |                                                             |
|-----------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                             |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                        |
| Amusement Devices (up to three)                                                         | UP(PH)                |                                                             |
| Food or Beverage for Immediate Consumption                                              | AUP                   |                                                             |
| Live Entertainment<br>Unamplified                                                       | ZC                    |                                                             |
| Amplified                                                                               | UP(PH)                |                                                             |
| Manufacturing Uses                                                                      | UP(PH)                |                                                             |
| Storage of Goods (over 25% of gross floor area)                                         | AUP                   |                                                             |
| Wholesale Activities                                                                    | UP(PH)                |                                                             |
| <b>Uses Permitted in Residential Districts</b>                                          |                       |                                                             |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                    |                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070 |
| Accessory Uses and Structures                                                           | Per R-3 District      | See Table 23D.36.030                                        |
| Accessory Buildings and Structures with Urban Agricultures                              | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060  |

| <b>Table 23E.40.030</b>                                           |                       |                                                           |
|-------------------------------------------------------------------|-----------------------|-----------------------------------------------------------|
| <b>Use and Required Permits</b>                                   |                       |                                                           |
| <b>Use</b>                                                        | <b>Classification</b> | <b>Special Requirements (if any)</b>                      |
| Child Care Centers                                                | UP(PH)                |                                                           |
| Clubs, Lodges                                                     | UP(PH)                |                                                           |
| Community Centers                                                 | UP(PH)                |                                                           |
| Dwelling Units, subject to R-3 Standards                          | UP(PH)                | Standards may be modified under Section 23E.40.070.E      |
| Group Living Accommodations subject to R-3 Standards              | UP(PH)                | Standards may be modified under Section 23E.40.070.E      |
| Hospitals                                                         | Prohibited            |                                                           |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels | UP(PH)                |                                                           |
| Libraries                                                         | UP(PH)                | Subject to parking requirements; see Section 23E.40.080.B |
| Nursing Homes                                                     | UP(PH)                | Subject to parking requirements; see Section 23E.40.080.B |
| Parks and Playgrounds                                             | ZC                    |                                                           |
| Public Safety and Emergency Services                              | UP(PH)                |                                                           |
| Religious Assembly Uses                                           | UP(PH)                |                                                           |
| Schools, Public or Private                                        | UP(PH)                |                                                           |
| Senior Congregate Housing                                         |                       | Changes of use from an existing dwelling unit             |
| Six or fewer persons                                              | ZC                    |                                                           |
| Seven or more persons                                             | AUP                   |                                                           |
| New Construction                                                  | UP(PH)                |                                                           |



| <b>Table 23E.40.030</b>                                             |                       |                                                                                                                                                                                 |
|---------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                     |                       |                                                                                                                                                                                 |
| <b>Use</b>                                                          | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                            |
| <b>Miscellaneous Uses</b>                                           |                       |                                                                                                                                                                                 |
| Automatic Teller Machines                                           | UP(PH)                | When not a part of a Retail Financial Service                                                                                                                                   |
| Cafeteria, Employee or Residential                                  | UP(PH)                |                                                                                                                                                                                 |
| Cemeteries, Crematories, Mausoleums                                 | Prohibited            |                                                                                                                                                                                 |
| Columbaria                                                          | AUP                   | Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building |
| Circus or Carnival                                                  | UP(PH)                |                                                                                                                                                                                 |
| Commercial Excavation                                               | UP(PH)                | Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas                                                        |
| Dry Cleaning and Laundry Plants                                     | Prohibited            |                                                                                                                                                                                 |
| Kennels or Pet Boarding                                             | Prohibited            |                                                                                                                                                                                 |
| Laboratories, Testing                                               | Prohibited            |                                                                                                                                                                                 |
| Mortuaries                                                          | Prohibited            |                                                                                                                                                                                 |
| Public Utility Substations, Tanks                                   | UP(PH)                |                                                                                                                                                                                 |
| Radio, Television or Audio/Sound Recording and/or Broadcast Studios | UP(PH)                |                                                                                                                                                                                 |

| Table 23E.40.030                                                                                                                                                                             |                                                                       |                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|---------------------------------------------------|
| Use and Required Permits                                                                                                                                                                     |                                                                       |                                                   |
| Use                                                                                                                                                                                          | Classification                                                        | Special Requirements (if any)                     |
| Warehouses or Storage including Mini-storage Warehouses                                                                                                                                      | Prohibited                                                            |                                                   |
| Wireless Telecommunications Facilities<br><br>Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District | AUP                                                                   | Subject to the requirements of Section 23C.17.100 |
| All Other Telecommunication Facilities                                                                                                                                                       | UP(PH)                                                                | Subject to the requirements of Section 23C.17.100 |
| Urban Agriculture                                                                                                                                                                            |                                                                       | 23C.26                                            |
| Low-Impact Urban Agriculture (LIUA)                                                                                                                                                          | ZC                                                                    |                                                   |
| High-Impact Urban Agriculture (HIUA)                                                                                                                                                         | AUP                                                                   |                                                   |
| Legend:                                                                                                                                                                                      |                                                                       |                                                   |
| ZC – Zoning Certificate                                                                                                                                                                      | *Change of Use of floor area over 2,000 sq. ft. shall require an AUP. |                                                   |
| AUP – Administrative Use Permit                                                                                                                                                              |                                                                       |                                                   |
| UP(PH) – Use Permit, public hearing required                                                                                                                                                 |                                                                       |                                                   |
| Prohibited – Use not permitted                                                                                                                                                               |                                                                       |                                                   |

- B. Any Use not listed that is compatible with the purposes of the C-N District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-N District shall be prohibited.
- C. The initial establishment, or change, of use of floor area of an existing non-residential building, or portion of building, shall be subject to the Permit requirements as listed in the legend of Table 23E.40.030.

Section 6. That Berkeley Municipal Code Section 23E.40.080.B is amended to read as follows:

**23E.40.080 Parking -- Number of Spaces**

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.40.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area.

| <b>Table 23E.40.080</b>         |                                                               |
|---------------------------------|---------------------------------------------------------------|
| <b>Parking Required</b>         |                                                               |
| Use                             | Number of spaces                                              |
| Hospitals                       | One per each four beds plus one per each three employees      |
| Libraries                       | One per 500 sq. ft. of floor area that is publicly accessible |
| Medical Practitioner Offices    | One per 300 sq. ft. of floor area                             |
|                                 |                                                               |
| Residential Uses, Nursing Homes | Refer to R-3 Standards, Section 23D.36.080                    |

Section 7. That Berkeley Municipal Code Section 23E.44.030 is amended to read as follows:

**23E.44.030 Uses Permitted**

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

| <b>Table 23E.44.030</b>                                                 |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                         |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Use</b>                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                                                                                                                                                                                                |
| <b>Retail Sales</b>                                                     |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
| All Retail Sales Uses, except those listed below                        | ZC*                   | As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).                                                                                                                                                                                                                                                                                                          |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops | UP(PH)                | Includes sale for off-site consumption at restaurants                                                                                                                                                                                                                                                                                                                                               |
| Department Stores<br><br>Over 3,000 s.f.                                | ZC*<br><br>Prohibited |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Drugstores                                                              | ZC*                   | A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located. |
| Firearm/Munitions Businesses                                            | UP(PH)                | Prohibited on any property devoted to residential use                                                                                                                                                                                                                                                                                                                                               |
| Pawn Shops, including Auction Houses                                    | Prohibited            |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Pet Stores, including Sales and Grooming of Animals                     | UP(PH)                | Does not include boarding of animals                                                                                                                                                                                                                                                                                                                                                                |
| Smoke Shops                                                             | UP(PH)                | Prohibited if within 1,400 feet of a school or public park                                                                                                                                                                                                                                                                                                                                          |

| <b>Table 23E.44.030</b>                                                   |                       |                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                           |                       |                                                                                                                                                                                                                           |
| <b>Use</b>                                                                | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                      |
| <b>Personal and Household Services</b>                                    |                       |                                                                                                                                                                                                                           |
| All Personal/Household Services, except those listed below                | ZC*                   | As defined in Sub-title F, except those otherwise listed (does not include Massage).                                                                                                                                      |
| Laundromats                                                               | UP(PH)                |                                                                                                                                                                                                                           |
| Veterinary Clinics, including Pet Hospitals                               | UP(PH)                |                                                                                                                                                                                                                           |
| Video Tape/Disk Rental Stores                                             | AUP                   |                                                                                                                                                                                                                           |
| <b>Offices</b>                                                            |                       |                                                                                                                                                                                                                           |
| Financial Services, Retail (Banks)                                        | UP(PH)                |                                                                                                                                                                                                                           |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents      | ZC*                   | When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area |
| Medical Practitioners                                                     | Prohibited            | Including Holistic Health and Mental Health Practitioners                                                                                                                                                                 |
| Non-Chartered Financial Institutions                                      | Prohibited            |                                                                                                                                                                                                                           |
| Other Professionals and Government, Institutions, Utilities               | AUP                   | When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area |
| <b>Food and Alcohol Service, Lodging, Entertainment and Assembly Uses</b> |                       |                                                                                                                                                                                                                           |
| Adult-oriented Businesses                                                 | Prohibited            |                                                                                                                                                                                                                           |

| <b>Table 23E.44.030</b>                                                       |                       |                                                                                                                                  |
|-------------------------------------------------------------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                               |                       |                                                                                                                                  |
| <b>Use</b>                                                                    | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                             |
| Alcoholic Beverage Service                                                    | UP(PH)                | Service of alcoholic beverages allowed only as incidental to food service in Food Service Establishments                         |
| Alcoholic Beverage Service of beer and wine incidental to seated food service | ZC                    | For on-site consumption only                                                                                                     |
| Amusement Device Arcades                                                      | Prohibited            |                                                                                                                                  |
| Commercial Recreation Center<br>Under 3,000 s.f.<br>Over 3,000 s.f.           | AUP<br>UP(PH)         | Outdoor use requires UP(PH)                                                                                                      |
| Dance, Exercise, Martial Arts and Music Studios                               | AUP                   |                                                                                                                                  |
| Entertainment Establishments, including Nightclubs                            | Prohibited            |                                                                                                                                  |
| Food Service Establishments                                                   | AUP                   | Food Service Establishments must provide public notification of decision (NOD) within a 300-foot radius of the subject property. |
| Group Class Instruction for Business, Vocational or Other Purposes            | AUP                   |                                                                                                                                  |
| Gyms and Health Clubs                                                         | AUP                   |                                                                                                                                  |

| Table 23E.44.030                                                          |                |                                                 |
|---------------------------------------------------------------------------|----------------|-------------------------------------------------|
| Use and Required Permits                                                  |                |                                                 |
| Use                                                                       | Classification | Special Requirements (if any)                   |
| Hotels, Tourist, including Inns,<br>Bed and Breakfasts and Hostels        | UP(PH)         |                                                 |
| Motels, Tourist                                                           | Prohibited     |                                                 |
| Theaters                                                                  | UP(PH)         | Including Motion Pictures and Stage Performance |
| Automobile and Other Vehicle Oriented Uses                                |                |                                                 |
| Automobile Parts Stores                                                   | ZC*            | Excluding service of auto parts                 |
| Automobile Repair and Service,<br>including Parts Service                 | Prohibited     |                                                 |
| Automobile Sales and Rentals                                              | Prohibited     |                                                 |
| Automobile Washes,<br>Mechanical or Self-Service                          | Prohibited     |                                                 |
| Automobile Wrecking<br>Establishments                                     | Prohibited     |                                                 |
| Gasoline/Automobile Fuel<br>Stations                                      | Prohibited     |                                                 |
| Motorcycle Stores, including<br>Sales and/or Service                      | Prohibited     |                                                 |
| Recreational Vehicle and<br>Trailers Sales and Rental,<br>including Boats | Prohibited     |                                                 |
| Tire Sales/Service Stores                                                 | Prohibited     |                                                 |
| Parking, Outdoor and Exterior Service Window Uses                         |                |                                                 |

| Table 23E.44.030                                                                                           |                           |                                                                            |
|------------------------------------------------------------------------------------------------------------|---------------------------|----------------------------------------------------------------------------|
| Use and Required Permits                                                                                   |                           |                                                                            |
| Use                                                                                                        | Classification            | Special Requirements (if any)                                              |
| Activities or Storage Outside of a building<br><br>Not abutting R-District<br><br>When abutting R-District | <br><br>AUP<br><br>UP(PH) |                                                                            |
| Automatic Teller Machines (exterior and when part of a Retail Financial Service)                           | UP(PH)                    |                                                                            |
| Drive-in Uses                                                                                              | Prohibited                | Providing service to customers in their cars. See definition in Subtitle F |
| Parking Lots                                                                                               | UP(PH)                    |                                                                            |
| Recycling Redemption Centers                                                                               | AUP                       |                                                                            |
| Outdoor Cafe Seating<br><br>When seating not abutting R-District<br><br>When seating abutting R-District   | <br><br>ZC<br><br>AUP     |                                                                            |
| <b>Combination Commercial/Residential Uses</b>                                                             |                           |                                                                            |
| Live/Work Units<br><br>Not requiring a UP under Chapter 23E.20<br><br>Requiring a UP under Chapter 23E.20  | <br><br>ZC<br><br>UP(PH)  |                                                                            |
| Mixed Use Developments (Residential/Commercial)                                                            | UP(PH)                    | Subject to the standards under Section 23E.44.070.E                        |



| Table 23E.44.030                                              |                |                                                                                                                                                                                                                                   |
|---------------------------------------------------------------|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                      |                |                                                                                                                                                                                                                                   |
| Use                                                           | Classification | Special Requirements (if any)                                                                                                                                                                                                     |
| Uses Incidental to a Permitted Use                            |                |                                                                                                                                                                                                                                   |
| Amusement Devices (up to three)                               | UP(PH)         |                                                                                                                                                                                                                                   |
| Food or Beverage for Immediate Consumption                    | UP(PH)         | Treated as Food Service Establishment and subject to numerical limitations in Table 23E.44.040. Incidental Food and Beverage for Immediate Consumption off the premises is permitted as an Accessory Use of a Food Product Store. |
| Live Entertainment                                            |                |                                                                                                                                                                                                                                   |
| Unamplified                                                   | ZC             |                                                                                                                                                                                                                                   |
| Amplified                                                     | Prohibited     |                                                                                                                                                                                                                                   |
| Manufacturing Uses                                            | UP(PH)         |                                                                                                                                                                                                                                   |
| Storage of Goods (over 25% of gross floor area)               | AUP            |                                                                                                                                                                                                                                   |
| Wholesale Activities                                          | UP(PH)         |                                                                                                                                                                                                                                   |
| Six or fewer persons                                          | ZC             |                                                                                                                                                                                                                                   |
| Seven or more persons                                         | AUP            |                                                                                                                                                                                                                                   |
| New Construction                                              | UP(PH)         |                                                                                                                                                                                                                                   |
| Uses Permitted in Residential Districts                       |                |                                                                                                                                                                                                                                   |
| Accessory Dwelling Unit in compliance with Section 23C.24.050 | ZC             |                                                                                                                                                                                                                                   |
| Accessory Dwelling Unit that does not comply with             | AUP            | Subject to making applicable findings in Section 23C.24.070                                                                                                                                                                       |

| <b>Table 23E.44.030</b>                                           |                       |                                                            |
|-------------------------------------------------------------------|-----------------------|------------------------------------------------------------|
| <b>Use and Required Permits</b>                                   |                       |                                                            |
| <b>Use</b>                                                        | <b>Classification</b> | <b>Special Requirements (if any)</b>                       |
| requirements under Section 23C.24.050                             |                       |                                                            |
| Accessory Uses and Structures                                     | Per R-3 District      | See Table 23D.36.030                                       |
| Accessory Buildings and Structures with Urban Agriculture         | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060 |
| Child Care Centers                                                | UP(PH)                |                                                            |
| Clubs, Lodges                                                     | UP(PH)                |                                                            |
| Community Centers                                                 | UP(PH)                |                                                            |
| Dwelling Units, subject to R-3 Standards                          | UP(PH)                | Standards may be modified under Section 23E.44.070.F       |
| Group Living Accommodations, subject to R-3 Standards             | UP(PH)                | Standards may be modified under Section 23E.44.070.F       |
| Hospitals                                                         | Prohibited            |                                                            |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels | UP(PH)                |                                                            |
| Libraries                                                         | UP(PH)                | Subject to parking requirements under Section 23E.44.080   |
| Nursing Homes                                                     | UP(PH)                | Subject to parking requirements under Section 23E.44.080   |
| Parks and Playgrounds                                             | ZC                    |                                                            |
| Public Safety and Emergency Services                              | UP(PH)                |                                                            |

| Table 23E.44.030                    |                |                                                                                                                                                                                 |
|-------------------------------------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits            |                |                                                                                                                                                                                 |
| Use                                 | Classification | Special Requirements (if any)                                                                                                                                                   |
| Religious Assembly Uses             | UP(PH)         |                                                                                                                                                                                 |
| Schools, Public or Private          | UP(PH)         |                                                                                                                                                                                 |
| Senior Congregate Housing           |                | Changes of use from an existing dwelling unit                                                                                                                                   |
| Six or fewer persons                | ZC             |                                                                                                                                                                                 |
| Seven or more persons               | AUP            |                                                                                                                                                                                 |
| New Construction                    | UP(PH)         |                                                                                                                                                                                 |
| Miscellaneous Uses                  |                |                                                                                                                                                                                 |
| Automatic Teller Machines           | Prohibited     | When not a part of a Retail Financial Service                                                                                                                                   |
| Cafeteria, Employee or Residential  | UP(PH)         |                                                                                                                                                                                 |
| Cemeteries, Crematories, Mausoleums | Prohibited     |                                                                                                                                                                                 |
| Columbaria                          | AUP            | Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building |
| Circus or Carnival                  | UP(PH)         |                                                                                                                                                                                 |
| Commercial Excavation               | UP(PH)         | Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas                                                        |
| Dry Cleaning and Laundry Plants     | Prohibited     |                                                                                                                                                                                 |
| Emergency Shelter                   |                | See Chapter 23C.10.                                                                                                                                                             |
| Up to 25 beds                       | ZC             |                                                                                                                                                                                 |
| More than 25 beds                   | UP(PH)         |                                                                                                                                                                                 |

| Table 23E.44.030                                                                                                                               |                |                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------|----------------|----------------------------------------------------------------|
| Use and Required Permits                                                                                                                       |                |                                                                |
| Use                                                                                                                                            | Classification | Special Requirements (if any)                                  |
| Kennels or Pet Boarding                                                                                                                        | Prohibited     |                                                                |
| Laboratories, Testing                                                                                                                          | Prohibited     |                                                                |
| Mortuaries                                                                                                                                     | Prohibited     |                                                                |
| Public Utility Substations, Tanks                                                                                                              | UP(PH)         |                                                                |
| Radio, Television or Audio/Sound Recording and/or Broadcast Studios                                                                            | UP(PH)         |                                                                |
| Warehouses or Storage including Mini-storage Warehouses                                                                                        | Prohibited     |                                                                |
| Wireless Telecommunications Facilities                                                                                                         |                |                                                                |
| Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District | AUP            | Subject to the requirements and findings of Section 23C.17.100 |
| All Other Telecommunication Facilities                                                                                                         | UP(PH)         | Subject to the requirements and findings of Section 23C.17.100 |
| Urban Agriculture                                                                                                                              |                | 23C.26                                                         |
| Low-Impact Urban Agriculture (LIUA)                                                                                                            | ZC             |                                                                |
| High-Impact Urban Agriculture (HIUA)                                                                                                           | AUP            |                                                                |

| Table 23E.44.030                             |                |                                                                       |
|----------------------------------------------|----------------|-----------------------------------------------------------------------|
| Use and Required Permits                     |                |                                                                       |
| Use                                          | Classification | Special Requirements (if any)                                         |
| Legend:                                      |                |                                                                       |
| ZC – Zoning Certificate                      |                | *Change of Use of floor area over 2,000 sq. ft. shall require an AUP. |
| AUP – Administrative Use Permit              |                |                                                                       |
| UP(PH) – Use Permit, public hearing required |                |                                                                       |
| Prohibited – Use not permitted               |                |                                                                       |

B. Any Use not listed that is compatible with the purposes of the C-E District shall be permitted subject to securing an Administrative Use Permit. Any Use that is not compatible with the purposes of the C-E District shall be prohibited.

C. The initial establishment, or change, of use of floor area of an existing non-residential building, or portion of building, shall be subject to the following permit requirements as listed in the legend of Table 23E.44.030.

Section 8. That Berkeley Municipal Code Section 23E.44.040.A is amended to read as follows:

**23E.44.040 Special Provisions -- Numerical Limitations**

A. Uses subject to numerical limitations as set forth in Table 23E.44.040 shall also be subject to the requirements of Section 23E.44.030. No such limitation may be exceeded unless the Board issues an Administrative Use Permit and makes the findings under Section 23E.44.090.C.

| <b>Table 23E.44.040</b>                                              |              |                |                    |
|----------------------------------------------------------------------|--------------|----------------|--------------------|
| <b>Numerical Limitations</b>                                         |              |                |                    |
| Use                                                                  | Number Limit | Size (sq. ft.) | Type of Permit     |
| Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops             | No limit     | 1,500          | Zoning Certificate |
| Bookstores, Periodical Stands                                        | No limit     | 2,000          | Zoning Certificate |
| Food Service Establishments:                                         | 25           |                |                    |
|                                                                      |              |                |                    |
|                                                                      |              |                |                    |
| Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services | No limit     | 1,000          | Zoning Certificate |

Section 9. That Berkeley Municipal Code Section 23E.48.030 is amended to read as follows:

**23E.48.030 Uses Permitted**

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

| <b>Table 23E.48.030</b>                                                 |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                         |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Use</b>                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                                                                                                                                                                                                |
| Retail Sales                                                            |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
| All Retail Sales Uses, except those listed below                        | ZC*                   | As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).                                                                                                                                                                                                                                                                                                          |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops | UP(PH)                | Includes sale for off-site consumption at restaurants                                                                                                                                                                                                                                                                                                                                               |
| Department Stores<br><br>Over 3,000 s.f.                                | ZC*<br><br>Prohibited |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Drugstores                                                              | ZC*                   | A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located. |
| Firearm/Munitions Businesses                                            | UP(PH)                | Prohibited on any property devoted to residential use                                                                                                                                                                                                                                                                                                                                               |
| Pawn Shops, including Auction Houses                                    | Prohibited            |                                                                                                                                                                                                                                                                                                                                                                                                     |

| <b>Table 23E.48.030</b>                                                |                       |                                                                                                                                                                                                                         |
|------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                        |                       |                                                                                                                                                                                                                         |
| <b>Use</b>                                                             | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                    |
| Pet Stores, including Sales and Grooming of Animals (but not Boarding) | UP(PH)                |                                                                                                                                                                                                                         |
| Smoke Shops                                                            | UP(PH)                | Prohibited if within 1,400 feet of a school or public park                                                                                                                                                              |
| <b>Personal and Household Services</b>                                 |                       |                                                                                                                                                                                                                         |
| All Personal and Household Services, except those listed below         | ZC*                   | As defined in Sub-title F, except those otherwise listed (does not include Massage)                                                                                                                                     |
| Laundromats                                                            | UP(PH)                |                                                                                                                                                                                                                         |
| Veterinary Clinics, including Pet Hospitals                            | UP(PH)                |                                                                                                                                                                                                                         |
| <b>Offices</b>                                                         |                       |                                                                                                                                                                                                                         |
| Financial Services, Retail (Banks)                                     | UP(PH)                |                                                                                                                                                                                                                         |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents   | ZC*                   | When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area |
| Medical Practitioners                                                  | UP(PH)                | Including Holistic Health and Mental Health Practitioners. Subject to parking requirements; see Table 23E.48.080                                                                                                        |
| Non-Chartered Financial Institutions                                   | Prohibited            |                                                                                                                                                                                                                         |



| <b>Table 23E.48.030</b>                                                       |                       |                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                               |                       |                                                                                                                                                                                                                         |
| <b>Use</b>                                                                    | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                    |
| Other Professionals and Government, Institutions, Utilities                   | AUP                   | When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area |
| Food and Alcohol Service, Lodging, Entertainment and Assembly Uses            |                       |                                                                                                                                                                                                                         |
| Adult-oriented Businesses                                                     | Prohibited            |                                                                                                                                                                                                                         |
| Alcoholic Beverage Service of beer and wine incidental to seated food service | ZC                    | For on-site consumption only                                                                                                                                                                                            |
| Alcoholic Beverage Service (no Bars, Cocktail Lounges, or Taverns allowed)    | UP(PH)                | Service of distilled alcoholic beverages may be approved only for Full Service Restaurants                                                                                                                              |
| Amusement Device Arcades                                                      | Prohibited            |                                                                                                                                                                                                                         |
| Commercial Recreation Center<br>Under 3,000 s.f.<br>Over 3,000 s.f.           | AUP<br>UP(PH)         | Outdoor use requires UP(PH)                                                                                                                                                                                             |
| Dance, Exercise, Martial Arts and Music Studios                               | AUP                   |                                                                                                                                                                                                                         |
| Entertainment Establishments, including Nightclubs                            | UP(PH)                |                                                                                                                                                                                                                         |
| Food Service Establishments                                                   |                       | Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property.                                                                       |

| Table 23E.48.030                                                   |                |                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                           |                |                                                                                                                                                                                                                                                      |
| Use                                                                | Classification | Special Requirements (if any)                                                                                                                                                                                                                        |
| Under 1,000 s.f.<br>Over 1,000 s.f.                                | ZC<br>AUP      |                                                                                                                                                                                                                                                      |
| Group Class Instruction for Business, Vocational or Other Purposes | AUP            | When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area; not to exceed 2,500 sq. ft. |
| Gyms and Health Clubs                                              | AUP            |                                                                                                                                                                                                                                                      |
| Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels    | UP(PH)         |                                                                                                                                                                                                                                                      |
| Motels, Tourist                                                    | Prohibited     |                                                                                                                                                                                                                                                      |
| Theaters, including Motion Pictures and Stage Performance          | Prohibited     |                                                                                                                                                                                                                                                      |
| Automobile and Other Vehicle Oriented Uses                         |                |                                                                                                                                                                                                                                                      |
| Automobile Parts Stores                                            | ZC*            | Excluding service of auto parts                                                                                                                                                                                                                      |
| Automobile Repair and Service, including Parts Service             | Prohibited     |                                                                                                                                                                                                                                                      |
| Automobile Sales and Rentals                                       | Prohibited     |                                                                                                                                                                                                                                                      |

| Table 23E.48.030                                                          |                |                                                                                 |
|---------------------------------------------------------------------------|----------------|---------------------------------------------------------------------------------|
| Use and Required Permits                                                  |                |                                                                                 |
| Use                                                                       | Classification | Special Requirements (if any)                                                   |
| Automobile Washes,<br>Mechanical or Self-Service                          | Prohibited     |                                                                                 |
| Automobile Wrecking<br>Establishments                                     | Prohibited     |                                                                                 |
| Gasoline/Automobile Fuel<br>Stations                                      | UP(PH)         |                                                                                 |
| Motorcycle Stores, including<br>Sales and/or Service                      | Prohibited     |                                                                                 |
| Recreational Vehicle and<br>Trailers Sales and Rental,<br>including Boats | Prohibited     |                                                                                 |
| Tire Sales/Service Stores                                                 | Prohibited     |                                                                                 |
| Parking, Outdoor and Exterior Service Window Uses                         |                |                                                                                 |
| Activities or Storage Outside of<br>a building                            |                |                                                                                 |
| Not abutting R-District                                                   | AUP            |                                                                                 |
| When abutting R-District                                                  | UP(PH)         |                                                                                 |
| Automatic Teller Machines                                                 | AUP            | Exterior and when part of a Retail Financial Service                            |
| Drive-in Uses                                                             | UP(PH)         | Providing service to customers in their cars. See definition in Sub-<br>title F |
| Parking Lots                                                              | UP(PH)         |                                                                                 |
| Recycling Redemption Centers                                              | AUP            |                                                                                 |
| Outdoor Cafe Seating                                                      |                |                                                                                 |

| Table 23E.48.030                                |                |                                                                       |
|-------------------------------------------------|----------------|-----------------------------------------------------------------------|
| Use and Required Permits                        |                |                                                                       |
| Use                                             | Classification | Special Requirements (if any)                                         |
| When seating not abutting R-District            | ZC             |                                                                       |
| When seating abutting R-District                | AUP            |                                                                       |
| Combination Commercial/Residential Uses         |                |                                                                       |
| Live/Work Units                                 |                |                                                                       |
| Not requiring a UP under Chapter 23E.20         | ZC             |                                                                       |
| Requiring a UP under Chapter 23E.20             | UP(PH)         |                                                                       |
| Mixed Use Developments (Residential/Commercial) | UP(PH)         | Subject to the standards under Sections 23E.48.070.E and 23E.48.080.D |
| Uses Incidental to a Permitted Use              |                |                                                                       |
| Amusement Devices (up to three)                 | UP(PH)         |                                                                       |
| Food or Beverage for Immediate Consumption      | UP(PH)         |                                                                       |
| Live Entertainment                              |                |                                                                       |
| Unamplified                                     | ZC             |                                                                       |
| Amplified                                       | UP(PH)         |                                                                       |
| Manufacturing Uses                              | Prohibited     |                                                                       |
| Storage of Goods (over 25% of gross floor area) | AUP            |                                                                       |

| <b>Table 23E.48.030</b>                                                                 |                       |                                                             |
|-----------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                             |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                        |
| Wholesale Activities                                                                    | Prohibited            |                                                             |
| Uses Permitted in Residential Districts                                                 |                       |                                                             |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                    |                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070 |
| Accessory Uses and Structures                                                           | Per R-3 District      | See Table 23D.36.030                                        |
| Accessory Buildings and Structures with Urban Agriculture                               | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060  |
| Short-Term Rental                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                   |
| Child Care Centers                                                                      | UP(PH)                |                                                             |
| Clubs, Lodges                                                                           | Prohibited            |                                                             |
| Community Centers                                                                       | UP(PH)                |                                                             |
| Dwelling Units, subject to R-3 Standards                                                | UP(PH)                | Subject to the standards under Section 23E.48.070.F         |
| Group Living Accommodations, subject to R-3 Standards                                   | UP(PH)                | Subject to the standards under Section 23E.48.070.F         |
| Hospitals                                                                               | Prohibited            |                                                             |

| <b>Table 23E.48.030</b>                                                 |                       |                                                                                                                                                                                 |
|-------------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                         |                       |                                                                                                                                                                                 |
| <b>Use</b>                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                            |
| Hotels, Residential, including<br>Single Room Occupancy (SRO)<br>Hotels | UP(PH)                |                                                                                                                                                                                 |
| Libraries                                                               | UP(PH)                | Subject to parking requirements; see Section 23E.48.080                                                                                                                         |
| Nursing Homes                                                           | UP(PH)                | Subject to parking requirements; see Section 23E.48.080                                                                                                                         |
| Parks and Playgrounds                                                   | ZC                    |                                                                                                                                                                                 |
| Public Safety and Emergency<br>Services                                 | UP(PH)                |                                                                                                                                                                                 |
| Religious Assembly Uses                                                 | UP(PH)                |                                                                                                                                                                                 |
| Schools, Public or Private                                              | UP(PH)                |                                                                                                                                                                                 |
| Senior Congregate Housing                                               |                       | Change of use from an existing dwelling unit                                                                                                                                    |
| Six or fewer persons                                                    | ZC                    |                                                                                                                                                                                 |
| Seven or more persons                                                   | AUP                   |                                                                                                                                                                                 |
| New Construction                                                        | UP(PH)                |                                                                                                                                                                                 |
| <b>Miscellaneous Uses</b>                                               |                       |                                                                                                                                                                                 |
| Automatic Teller Machines                                               | UP(PH)                | When not a part of a Retail Financial Service                                                                                                                                   |
| Cafeteria, Employee or<br>Residential                                   | UP(PH)                |                                                                                                                                                                                 |
| Cemeteries, Crematories,<br>Mausoleums                                  | Prohibited            |                                                                                                                                                                                 |
| Columbaria                                                              | AUP                   | Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building |

| <b>Table 23E.48.030</b>                                                                              |                       |                                                                                                                          |
|------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                      |                       |                                                                                                                          |
| <b>Use</b>                                                                                           | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                     |
| Circus or Carnival                                                                                   | UP(PH)                |                                                                                                                          |
| Commercial Excavations                                                                               | UP(PH)                | Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas |
| Dry Cleaning and Laundry Plants                                                                      | UP(PH)                |                                                                                                                          |
| Emergency Shelter                                                                                    |                       | See Chapter 23C.10.                                                                                                      |
| Up to 25 beds                                                                                        | ZC                    |                                                                                                                          |
| More than 25 beds                                                                                    | UP(PH)                |                                                                                                                          |
| Kennels or Pet Boarding                                                                              | Prohibited            |                                                                                                                          |
| Laboratories, Testing                                                                                | Prohibited            |                                                                                                                          |
| Mortuaries                                                                                           | Prohibited            |                                                                                                                          |
| Radio, Television, or Audio/Sound Recording and/or Broadcast Studios                                 | UP(PH)                |                                                                                                                          |
| Public Utility Substations, Tanks                                                                    | UP(PH)                |                                                                                                                          |
| Warehouses or Storage including Mini-storage Warehouses                                              | Prohibited            |                                                                                                                          |
| Wireless Telecommunications Facilities                                                               |                       |                                                                                                                          |
| Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site | AUP                   | Subject to the requirements and findings of Section 23C.17.100                                                           |

| Table 23E.48.030                             |                                                                        |                                                                |
|----------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------|
| Use and Required Permits                     |                                                                        |                                                                |
| Use                                          | Classification                                                         | Special Requirements (if any)                                  |
| Is Not Adjacent to a Residential District    |                                                                        |                                                                |
| All Other Telecommunication Facilities       | UP(PH)                                                                 | Subject to the requirements and findings of Section 23C.17.100 |
| Urban Agriculture                            |                                                                        | 23C.26                                                         |
| Low-Impact Urban Agriculture (LIUA)          | ZC                                                                     |                                                                |
| High-Impact Urban Agriculture (HIUA)         | AUP                                                                    |                                                                |
| Legend:                                      |                                                                        |                                                                |
| ZC – Zoning Certificate                      | * Change of Use of floor area over 2,000 sq. ft. shall require an AUP. |                                                                |
| AUP – Administrative Use Permit              |                                                                        |                                                                |
| UP(PH) – Use Permit, public hearing required |                                                                        |                                                                |
| Prohibited – Use not permitted               |                                                                        |                                                                |
|                                              |                                                                        |                                                                |

B. Any use not listed that is compatible with the purposes of the C-NS District shall be permitted subject to securing an Administrative Use Permit. Any Use that is not compatible with the purposes of the C-NS District shall be prohibited.

C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the Permit requirements as listed in the legend of Table 23E.48.030.

Section 10. That Berkeley Municipal Code Section 23E.48.080.B is amended to read as follows:



**23E.48.080 Parking -- Number of Spaces**

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.48.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area.

| <b>Table 23E.48.080</b>         |                                                               |
|---------------------------------|---------------------------------------------------------------|
| <b>Parking Required</b>         |                                                               |
| Use                             | Number of spaces                                              |
| Libraries                       | One per 500 sq. ft. of floor area that is publicly accessible |
| Medical Practitioner Offices    | One per 300 sq. ft. of floor area                             |
|                                 |                                                               |
| Residential Uses, Nursing Homes | Refer to R-3 Standards, Section 23D.36.080                    |

Section 11. That Berkeley Municipal Code Section 23E.52.030 is amended to read as follows:

**23E.52.030 Uses Permitted**

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

| <b>Table 23E.52.030</b>                                                 |                       |                                                                                                                                                           |
|-------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                         |                       |                                                                                                                                                           |
| <b>Use</b>                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                      |
| <b>Retail Sales</b>                                                     |                       |                                                                                                                                                           |
| All Retail Sales Uses, except those listed below                        | ZC*                   | As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)                                                                 |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops | UP(PH)                | Includes sale for off-site consumption at restaurants<br>No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue |
| Department Stores<br><br>Over 3,000 s.f.                                | ZC*<br><br>UP(PH)     |                                                                                                                                                           |
| Firearm/Munitions Businesses                                            | UP(PH)                | Prohibited on any property devoted to residential use                                                                                                     |
| Pawn Shops                                                              | Prohibited            | Including Auction Houses                                                                                                                                  |
| Pet Stores                                                              | UP(PH)                | Including Sales and Grooming of Animals (but not Boarding)                                                                                                |
| Smoke Shops                                                             | UP(PH)                | Prohibited if within 1,400 feet of a school or public park                                                                                                |
| <b>Personal and Household Services</b>                                  |                       |                                                                                                                                                           |
| All Personal and Household Services, except those listed below          | ZC*                   | As defined in Sub-title F, except those otherwise listed (does not include Massage)                                                                       |
| Laundromats                                                             | AUP                   |                                                                                                                                                           |

| <b>Table 23E.52.030</b>                                                             |                       |                                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                     |                       |                                                                                                                                                                                                                                                              |
| <b>Use</b>                                                                          | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                                                         |
| Veterinary Clinics                                                                  | UP(PH)                | Including Pet Hospitals                                                                                                                                                                                                                                      |
| <b>Offices</b>                                                                      |                       |                                                                                                                                                                                                                                                              |
| Financial Services, Retail (Banks)                                                  | ZC*                   |                                                                                                                                                                                                                                                              |
| Insurance Agents, Title Companies,<br>Real Estate Agents, Travel Agents             | ZC*                   |                                                                                                                                                                                                                                                              |
| Medical Practitioners, including Holistic<br>Health and Mental Health Practitioners | ZC*                   | Subject to parking requirements; see Table 23E.52.080                                                                                                                                                                                                        |
| Non-Chartered Financial Institutions                                                | UP(PH)                | Subject to additional requirements; see<br>Section 23E.16.080                                                                                                                                                                                                |
| Other Professionals and Government,<br>Institutions, Utilities                      | ZC*                   |                                                                                                                                                                                                                                                              |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>          |                       |                                                                                                                                                                                                                                                              |
| Adult-oriented Businesses                                                           | Prohibited            |                                                                                                                                                                                                                                                              |
| Alcoholic Beverage Service of beer<br>and wine incidental to seated food<br>service | ZC                    | For on-site consumption only                                                                                                                                                                                                                                 |
| Alcoholic Beverage Service, including<br>Bars, Cocktail Lounges and Taverns         | UP(PH)                | Includes service of distilled spirits incidental to food<br>service.<br><br>No service of distilled alcoholic beverages is allowed along<br>Adeline Street south of Ashby Avenue, except as incidental<br>to seated food service; see Section 23D.52.060 D1. |
|                                                                                     |                       |                                                                                                                                                                                                                                                              |

| <b>Table 23E.52.030</b>                                                |                       |                                                                                                                                                   |
|------------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                        |                       |                                                                                                                                                   |
| <b>Use</b>                                                             | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                              |
| Amusement Device Arcades                                               | UP(PH)                | Subject to additional requirements; see Section 23E.16.050                                                                                        |
| Commercial Recreation Center<br>Under 3,000 s.f.<br>Over 3,000 s.f.    | AUP<br>UP(PH)         | Outdoor use requires UP(PH)                                                                                                                       |
| Dance, Exercise, Martial Arts and Music Studios                        | ZC*                   |                                                                                                                                                   |
| Entertainment Establishments                                           | UP(PH)                | Including Nightclubs                                                                                                                              |
| Food Service Establishments<br><br>Under 1,000 s.f.<br>Over 1,000 s.f. | ZC<br>AUP             | Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property. |
| Group Class Instruction for Business, Vocational or Other Purposes     | ZC*                   |                                                                                                                                                   |
| Gyms and Health Clubs                                                  | ZC*                   |                                                                                                                                                   |
| Hotels, Tourist                                                        | UP(PH)                | Including Inns, Bed and Breakfasts and Hostels                                                                                                    |
| Motels, Tourist                                                        | Prohibited            |                                                                                                                                                   |

| <b>Table 23E.52.030</b>                                                                     |                       |                                                                                                                                                       |
|---------------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                             |                       |                                                                                                                                                       |
| <b>Use</b>                                                                                  | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                  |
| Theaters                                                                                    | UP(PH)                | Including Motion Pictures and Stage Performance                                                                                                       |
| <b>Automobile and Other Vehicle Oriented Uses</b>                                           |                       |                                                                                                                                                       |
| Automobile Parts Stores                                                                     | ZC*                   | Excluding service of auto parts                                                                                                                       |
| Automobile and Motorcycle Repair and Service, including Parts Service                       | Prohibited            |                                                                                                                                                       |
| Automobile and Motorcycle Sales<br>Exclusively indoor operations<br>With outdoor activities | ZC*<br>UP(PH)         | Subject to additional requirements, see 23E.52.070.F.<br>Uses with outdoor activities limited to the Dealership Overlay Area by Section 23E.52.060.E. |
| Automobile and Motorcycle Rentals                                                           | Prohibited            |                                                                                                                                                       |
| Automobile Washes, Mechanical or Self-Service                                               | Prohibited            |                                                                                                                                                       |
| Automobile Wrecking Establishments                                                          | Prohibited            |                                                                                                                                                       |
| Gasoline/Automobile Fuel Stations                                                           | UP(PH)                |                                                                                                                                                       |
| Recreational Vehicle and Trailers Sales and Rental                                          | Prohibited            | Including Boats                                                                                                                                       |
| Tire Sales/Service Stores                                                                   | Prohibited            |                                                                                                                                                       |
| <b>Parking, Outdoor and Exterior Service Window Uses</b>                                    |                       |                                                                                                                                                       |
| Activities or Storage Outside of a building<br>Not abutting R-District                      | AUP                   |                                                                                                                                                       |
| When abutting R-District                                                                    | UP(PH)                |                                                                                                                                                       |
| Automatic Teller Machines                                                                   | AUP                   | Exterior and when part of a Retail Financial Service                                                                                                  |

| <b>Table 23E.52.030</b>                             |                       |                                                                                   |
|-----------------------------------------------------|-----------------------|-----------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                     |                       |                                                                                   |
| <b>Use</b>                                          | <b>Classification</b> | <b>Special Requirements (if any)</b>                                              |
| Drive-in Uses                                       | UP(PH)                | Which provide service to customers in their cars; see definition in Sub-title 23F |
| Parking Lots, Parking Structures                    | UP(PH)                |                                                                                   |
| Recycling Redemption Centers                        | AUP                   |                                                                                   |
| Outdoor Cafe Seating                                |                       |                                                                                   |
| When seating not abutting R-District                | ZC                    |                                                                                   |
| When seating abutting R-District                    | AUP                   |                                                                                   |
| <b>Combination Commercial/Residential Uses</b>      |                       |                                                                                   |
| Live/Work Units                                     | UP(PH)                | Subject to the standards of Chapter 23E.20                                        |
| Mixed Use Developments                              |                       |                                                                                   |
| (Residential/Commercial) of less than 5,000 sq. ft. | ZC                    | Subject to the standards of Section 23E.52.070.D.1 through 6                      |
| (Residential/Commercial) of 5,000 sq. or more       | UP(PH)                | Subject to the standards of Section 23E.52.070.D.7                                |
| <b>Uses Incidental to a Permitted Use</b>           |                       |                                                                                   |
| Amusement Devices (up to three)                     | UP(PH)                |                                                                                   |
| Food or Beverage for Immediate Consumption          | ZC                    |                                                                                   |
| Live Entertainment                                  |                       |                                                                                   |
| Unamplified                                         | ZC                    |                                                                                   |
| Amplified                                           | AUP                   |                                                                                   |
| Manufacturing Uses                                  | AUP                   |                                                                                   |

| <b>Table 23E.52.030</b>                                                                 |                       |                                                             |
|-----------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                             |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                        |
| Storage of Goods (over 25% of gross floor area)                                         | AUP                   |                                                             |
| Wholesale Activities                                                                    | AUP                   |                                                             |
| <b>Uses Permitted in Residential Districts</b>                                          |                       |                                                             |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                    |                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070 |
| Accessory Uses and Structures                                                           | Per R-3 District      | See Table 23D.36.030                                        |
| Accessory Buildings and Structures with Urban Agriculture                               | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060  |
| Short-Term Rental                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                   |
| Child Care Centers                                                                      | UP(PH)                |                                                             |
| Clubs, Lodges                                                                           | UP(PH)                |                                                             |
| Community Centers                                                                       | UP(PH)                |                                                             |
| Dwelling Units, subject to R-3 Standards                                                | UP(PH)                | Subject to the standards under Section 23E.52.070.E         |
| Group Living Accommodations subject to R-3 Standards                                    | UP(PH)                | Subject to the standards under Section 23E.52.070.E         |
| Hospitals                                                                               | Prohibited            |                                                             |

| <b>Table 23E.52.030</b>                                           |                       |                                                                                                                                                                                 |
|-------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                   |                       |                                                                                                                                                                                 |
| <b>Use</b>                                                        | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                            |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels | UP(PH)                |                                                                                                                                                                                 |
| Libraries                                                         | UP(PH)                | Subject to parking requirements; see Section 23E.52.080                                                                                                                         |
| Nursing Homes                                                     | UP(PH)                | Subject to parking requirements; see Section 23E.52.080                                                                                                                         |
| Parks and Playgrounds                                             | ZC                    |                                                                                                                                                                                 |
| Public Safety and Emergency Services                              | UP(PH)                |                                                                                                                                                                                 |
| Religious Assembly Uses                                           | UP(PH)                |                                                                                                                                                                                 |
| Schools, Public or Private                                        | UP(PH)                |                                                                                                                                                                                 |
| Senior Congregate Housing                                         |                       | Change of use from an existing dwelling unit                                                                                                                                    |
| Six or fewer people                                               | ZC                    |                                                                                                                                                                                 |
| Seven or more people                                              | AUP                   |                                                                                                                                                                                 |
| New construction                                                  | UP(PH)                |                                                                                                                                                                                 |
| <b>Miscellaneous Uses</b>                                         |                       |                                                                                                                                                                                 |
| Automatic Teller Machines                                         | UP(PH)                | When not a part of a Retail Financial Service                                                                                                                                   |
| Cafeteria, Employee or Residential                                | UP(PH)                |                                                                                                                                                                                 |
| Cemeteries, Crematories, Mausoleums                               | Prohibited            |                                                                                                                                                                                 |
| Columbaria                                                        | AUP                   | Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building |
| Circus or Carnival                                                | UP(PH)                |                                                                                                                                                                                 |



| <b>Table 23E.52.030</b>                                                                                                                        |                       |                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                                                                |                       |                                                                                                                          |
| <b>Use</b>                                                                                                                                     | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                     |
| Commercial Excavation                                                                                                                          | UP(PH)                | Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas |
| Dry Cleaning and Laundry Plants                                                                                                                | Prohibited            |                                                                                                                          |
| Emergency Shelter                                                                                                                              |                       | See Chapter 23C.10.                                                                                                      |
| Up to 25 beds                                                                                                                                  | ZC                    |                                                                                                                          |
| More than 25 beds                                                                                                                              | UP(PH)                |                                                                                                                          |
| Kennels or Pet Boarding                                                                                                                        | Prohibited            |                                                                                                                          |
| Laboratories, Testing                                                                                                                          | Prohibited            |                                                                                                                          |
| Mortuaries                                                                                                                                     | Prohibited            |                                                                                                                          |
| Public Utility Substations, Tanks                                                                                                              | UP(PH)                |                                                                                                                          |
| Radio, Television or Audio/Sound Recording and/or Broadcast Studios                                                                            | UP(PH)                |                                                                                                                          |
| Warehouses or Storage, including Mini-storage Warehouses                                                                                       | Prohibited            |                                                                                                                          |
| Wireless Telecommunications Facilities                                                                                                         |                       |                                                                                                                          |
| Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District | AUP                   | Subject to the requirements and findings of Section 23C.17.100                                                           |
| All Other Telecommunication Facilities                                                                                                         | UP(PH)                | Subject to the requirements and findings of Section 23C.17.100                                                           |
| Urban Agriculture                                                                                                                              |                       | 23C.26                                                                                                                   |

| Table 23E.52.030                             |                                                                       |                               |
|----------------------------------------------|-----------------------------------------------------------------------|-------------------------------|
| Use and Required Permits                     |                                                                       |                               |
| Use                                          | Classification                                                        | Special Requirements (if any) |
| Low-Impact Urban Agriculture (LIUA)          | ZC                                                                    |                               |
| High-Impact Urban Agriculture (HIUA)         | AUP                                                                   |                               |
| Legend:                                      |                                                                       |                               |
| ZC – Zoning Certificate                      | *Change of Use of floor area over 3,000 sq. ft. shall require an AUP. |                               |
| AUP – Administrative Use Permit              |                                                                       |                               |
| UP(PH) – Use Permit, public hearing required |                                                                       |                               |
| Prohibited – Use not permitted               |                                                                       |                               |

B. Any use not listed that is compatible with the purposes of the C-SA District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-SA District shall be prohibited.

C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the permit requirements as listed in the legend of Table 23E.52.030.

Section 12. That Berkeley Municipal Code Section 23E.52.060.D is amended to read as follows:

**23E.52.060 Use Limitations\***

D. Adult-oriented Businesses are prohibited. Alcoholic Beverage Sales or Service Uses, Amusement Arcades, Live/Work Uses, and Non-Chartered Financial Institutions shall be subject to the requirements of Chapters 23E.16 and 23E.20 and the following requirement:

1. The sale and service of distilled alcoholic beverages (hard liquor) is prohibited along Adeline Street, south of Ashby Avenue, except that such service may be allowed subject to obtaining a Use Permit for seated food service and onsite consumption when such service is incidental to meals.

Section 13. That Berkeley Municipal Code Section 23E.52.080.B is amended to read as follows:

**23E.52.080 Parking -- Number of Spaces**

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.52.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area.

| Table 23E.52.080                |                                                               |
|---------------------------------|---------------------------------------------------------------|
| Parking Required                |                                                               |
| Use                             | Number of spaces                                              |
| Libraries                       | One per 500 sq. ft. of floor area that is publicly accessible |
| Medical Practitioner Offices    | One per 300 sq. ft. of floor area                             |
| Residential Uses, Nursing Homes | Refer to R-4 Standards, Section 23D.40.080                    |
| Automobile and Motorcycle Sales | One per 1,000 sq. ft. of floor area                           |

Section 14. That Berkeley Municipal Code Section 23E.56.030.A is amended to read as follows:

**23E.56.030 Uses Permitted**

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use

Permit (AUP), a Use Permit approved after a public hearing (UP(PH)), or is Prohibited. See also Section 23E.56.070.C for restrictions on usage of upper floors.

| <b>Table 23E.56.030</b>                                                 |                       |                                                                                             |
|-------------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                         |                       |                                                                                             |
| <b>Use</b>                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                        |
| <b>Retail Sales</b>                                                     |                       |                                                                                             |
| All Retail Sales Uses, except those listed below                        | ZC                    | As defined in Sub-title 23F, except otherwise listed (does not include Video Rental Stores) |
| Alcoholic Beverage Retail Sales including liquor stores and wine shops  | Prohibited            | Includes sale for off-site consumption at restaurants                                       |
| Department Stores<br>Over 3,000 s.f.                                    | ZC<br>UP(PH)          |                                                                                             |
| Drug Paraphernalia (any use involving the sale or distribution thereof) | Prohibited            | As defined in California Health and Safety Code Section 11364.5(d)                          |
| Firearm/Munitions Businesses                                            | UP(PH)                | Prohibited on any property devoted to residential use                                       |
| Pawn Shops                                                              | Prohibited            | Including Auction Houses                                                                    |
| Pet Stores                                                              | UP(PH)                | Including Sales and Grooming of Animals (but not Boarding)                                  |
| Smoke Shops                                                             | UP(PH)                | Prohibited if within 1,400 feet of a school or public park                                  |
| <b>Personal and Household Services</b>                                  |                       |                                                                                             |
| All Personal and Household Services, except those listed below          | ZC                    | As defined in Sub-title 23F, except those otherwise listed (does not include Massage).      |
| Laundromats                                                             | AUP*                  |                                                                                             |
| Veterinary Clinics                                                      | UP(PH)                | Including Pet Hospitals                                                                     |
| <b>Offices</b>                                                          |                       |                                                                                             |

| <b>Table 23E.56.030</b>                                                          |                       |                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                  |                       |                                                                                                                                                                                                                                                                                                                                  |
| <b>Use</b>                                                                       | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                                                                                                                             |
| Financial Services, Retail (Banks)                                               | AUP*                  |                                                                                                                                                                                                                                                                                                                                  |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents             | ZC                    | Subject to restrictions above the ground floor except on Bancroft Way; see Section 23E.56.070.<br><br>When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.   |
| Medical Practitioners, including Holistic Health and Mental Health Practitioners | AUP*                  | Subject to restrictions above the ground floor except on Bancroft Way; see Section 23E.56.070.C.<br><br>When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area. |
| Non-Chartered Financial Institutions                                             | UP(PH)                | Subject to additional requirements; see Section 23E.16.080                                                                                                                                                                                                                                                                       |
| Other Professionals and Government, Institutions, Utilities                      | AUP*                  | Subject to restrictions above the ground floor except on Bancroft Way; see Section 23E.56.070.C.<br><br>When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area. |
| <b>Food and Alcohol Service, Lodging, Entertainment and Assembly Uses</b>        |                       |                                                                                                                                                                                                                                                                                                                                  |
| Adult-oriented Businesses                                                        | Prohibited            |                                                                                                                                                                                                                                                                                                                                  |
| Alcoholic Beverage Service of beer and wine incidental to seated food service    | ZC                    | For on-site consumption only                                                                                                                                                                                                                                                                                                     |

| <b>Table 23E.56.030</b>                                                                            |                       |                                                                                                                    |
|----------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                    |                       |                                                                                                                    |
| <b>Use</b>                                                                                         | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                               |
| Alcoholic Beverage Service, including Bars, Cocktail Lounges and Taverns                           | UP(PH)                | For on-site consumption only.<br>Service of distilled alcoholic beverages may be approved for seated food service. |
| Amusement Device Arcades                                                                           | Prohibited            |                                                                                                                    |
| Commercial Recreation Center<br>Under 5,000 s.f.<br>Between 5,000--10,000 s.f.<br>Over 10,000 s.f. | ZC<br>AUP*<br>UP(PH)  | Outdoor use requires UP(PH)                                                                                        |
| Dance, Exercise, Martial Arts and Music Studios                                                    | ZC                    |                                                                                                                    |
| Entertainment Establishments                                                                       | UP(PH)                | Including Nightclubs                                                                                               |
| Food Service Establishments<br>Under 1,500 s.f.<br>Over 1,500 s.f.                                 | ZC<br>AUP*            |                                                                                                                    |
| Group Class Instruction for Business, Vocational or Other Purposes                                 | ZC                    | Prohibited on ground floor adjacent to street frontage                                                             |
| Gyms and Health Clubs                                                                              | ZC                    |                                                                                                                    |
| Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels                                    | UP(PH)                |                                                                                                                    |
| Motels, Tourist                                                                                    | Prohibited            |                                                                                                                    |

| <b>Table 23E.56.030</b>                                             |                       |                                                      |
|---------------------------------------------------------------------|-----------------------|------------------------------------------------------|
| <b>Use and Required Permits</b>                                     |                       |                                                      |
| <b>Use</b>                                                          | <b>Classification</b> | <b>Special Requirements (if any)</b>                 |
| Theaters, including Motion Pictures and Stage Performance           | UP(PH)                |                                                      |
| <b>Automobile and Other Vehicle Oriented Uses</b>                   |                       |                                                      |
| Automobile Parts Stores                                             | ZC                    | Excluding service of auto parts                      |
| Automobile Repair and Service                                       | Prohibited            |                                                      |
| Automobile Sales and Rentals                                        | Prohibited            |                                                      |
| Automobile Washes, Mechanical or Self-Service                       | Prohibited            |                                                      |
| Automobile Wrecking Establishments                                  | Prohibited            |                                                      |
| Automobile/Motorcycle Parts Service                                 | UP(PH)                |                                                      |
| Gasoline/Automobile Fuel Stations                                   | Prohibited            | Except when located in a parking structure           |
| Motorcycle Stores                                                   | Prohibited            | Including Sales and/or Service                       |
| Recreational Vehicle and Trailers Sales and Rental, including Boats | Prohibited            |                                                      |
| Tire Sales/Service Stores                                           | Prohibited            |                                                      |
| <b>Parking, Outdoor and Exterior Service Window Uses</b>            |                       |                                                      |
| Activities or Storage Outside of a building                         |                       |                                                      |
| Not abutting R- District                                            | AUP*                  |                                                      |
| When abutting R- District                                           | UP(PH)                |                                                      |
| Automatic Teller Machines                                           | AUP*                  | Exterior and when part of a Retail Financial Service |

| <b>Table 23E.56.030</b>                         |                       |                                                                                   |
|-------------------------------------------------|-----------------------|-----------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                 |                       |                                                                                   |
| <b>Use</b>                                      | <b>Classification</b> | <b>Special Requirements (if any)</b>                                              |
| Drive-in Uses                                   | Prohibited            | Which provide service to customers in their cars. See definition in Sub-title 23F |
| Parking Lots                                    | Prohibited            |                                                                                   |
| Parking Structures                              | UP(PH)                |                                                                                   |
| Recycling Redemption Centers                    | AUP*                  |                                                                                   |
| <b>Combination Commercial/Residential Uses</b>  |                       |                                                                                   |
| Live/Work Units                                 |                       |                                                                                   |
| Not requiring a UP under Chapter 23E.20         | ZC                    |                                                                                   |
| Requiring a UP under Chapter 23E.20             | UP(PH)                |                                                                                   |
| Mixed Use Developments (Residential/Commercial) | UP(PH)                | Subject to Section 23E.56.070.E                                                   |
| <b>Uses Incidental to a Permitted Use</b>       |                       |                                                                                   |
| Amusement Devices (up to 3)                     | AUP*                  |                                                                                   |
| Food or Beverage for Immediate Consumption      | AUP*                  |                                                                                   |
| Live Entertainment                              | AUP*                  |                                                                                   |
| Unamplified                                     | ZC                    |                                                                                   |
| Manufacturing Uses                              | AUP*                  |                                                                                   |
| Storage of Goods (over 25% of gross floor area) | AUP*                  |                                                                                   |
| Wholesale Activities                            | AUP*                  |                                                                                   |



| Table 23E.56.030                                                                        |                  |                                                             |
|-----------------------------------------------------------------------------------------|------------------|-------------------------------------------------------------|
| Use and Required Permits                                                                |                  |                                                             |
| Use                                                                                     | Classification   | Special Requirements (if any)                               |
| Uses Permitted in Residential Districts                                                 |                  |                                                             |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC               |                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP              | Subject to making applicable findings in Section 23C.24.070 |
| Accessory Uses and Structures                                                           | Per R-3 District | See Table 23D.36.030                                        |
| Accessory Buildings and Structures with Urban Agriculture                               | ZC               | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060  |
| Short-Term Rental                                                                       | ZC               | Subject to requirements of Chapter 23C.22                   |
| Child Care Centers                                                                      | UP(PH)           |                                                             |
| Clubs, Lodges                                                                           | UP(PH)           |                                                             |
| Community Centers                                                                       | UP(PH)           |                                                             |
| Dwelling Units, subject to R-3 Standards                                                | UP(PH)           | Subject to the standards under Section 23E.56.070.E         |
| Group Living Accommodations subject to R-3 Standards                                    | UP(PH)           | Subject to the standards under Section 23E.56.070.E         |
| Hospitals                                                                               | Prohibited       |                                                             |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels                       | UP(PH)           |                                                             |
| Libraries                                                                               | UP(PH)           |                                                             |

| Table 23E.56.030                     |                |                                                                                                                                                                                 |
|--------------------------------------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits             |                |                                                                                                                                                                                 |
| Use                                  | Classification | Special Requirements (if any)                                                                                                                                                   |
| Nursing Homes                        | UP(PH)         |                                                                                                                                                                                 |
| Parks and Playgrounds                | ZC             |                                                                                                                                                                                 |
| Public Safety and Emergency Services | UP(PH)         |                                                                                                                                                                                 |
| Religious Assembly Uses              | UP(PH)         |                                                                                                                                                                                 |
| Schools, Public or Private           | UP(PH)         |                                                                                                                                                                                 |
| Senior Congregate Housing            |                | Change of use from an existing dwelling unit                                                                                                                                    |
| Six or fewer people                  | ZC             |                                                                                                                                                                                 |
| Seven or more persons                | AUP            |                                                                                                                                                                                 |
| New Construction                     | UP(PH)         |                                                                                                                                                                                 |
| <b>Miscellaneous Uses</b>            |                |                                                                                                                                                                                 |
| Automatic Teller Machines            | UP(PH)         | When not a part of a Retail Financial Service                                                                                                                                   |
| Cafeteria, Employee or Residential   | UP(PH)         |                                                                                                                                                                                 |
| Cemeteries, Crematories, Mausoleums  | Prohibited     |                                                                                                                                                                                 |
| Circus or Carnival                   | UP(PH)         |                                                                                                                                                                                 |
| Columbaria                           | AUP            | Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building |
| Commercial Excavation                | UP(PH)         | Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas                                                        |
| Dry Cleaning and Laundry Plants      | Prohibited     |                                                                                                                                                                                 |

| <b>Table 23E.56.030</b>                                                                                                                                                                                                                    |                       |                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                                                                                                                                                            |                       |                                                                                                                                      |
| <b>Use</b>                                                                                                                                                                                                                                 | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                 |
| Emergency Shelter<br><br>Up to 25 beds<br><br>More than 25 beds                                                                                                                                                                            | ZC<br><br>UP(PH)      | See Chapter 23C.10.                                                                                                                  |
| Kennels or Pet Boarding                                                                                                                                                                                                                    | Prohibited            |                                                                                                                                      |
| Laboratories                                                                                                                                                                                                                               | Prohibited            | Except photographic processing laboratories                                                                                          |
| Mortuaries                                                                                                                                                                                                                                 | Prohibited            |                                                                                                                                      |
| Public Utility Substations, Tanks                                                                                                                                                                                                          | UP(PH)                |                                                                                                                                      |
| Radio, Television or Audio/Sound Recording and/or Broadcast Studios                                                                                                                                                                        | UP(PH)                |                                                                                                                                      |
| Warehouses or Storage, including Mini-storage Warehouses                                                                                                                                                                                   | Prohibited            |                                                                                                                                      |
| Wireless Telecommunications Facilities<br><br>Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District<br><br>All Other Telecommunication Facilities | AUP<br><br>UP(PH)     | Subject to the requirements and findings of Section 23C.17.100<br><br>Subject to the requirements and findings of Section 23C.17.100 |
| Urban Agriculture                                                                                                                                                                                                                          |                       | 23C.26                                                                                                                               |
| Low-Impact Urban Agriculture (LIUA)                                                                                                                                                                                                        | ZC                    |                                                                                                                                      |

| Table 23E.56.030                                                                                                                               |                                                                                                                                                                    |                               |
|------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Use and Required Permits                                                                                                                       |                                                                                                                                                                    |                               |
| Use                                                                                                                                            | Classification                                                                                                                                                     | Special Requirements (if any) |
| High-Impact Urban Agriculture (HIUA)                                                                                                           | AUP                                                                                                                                                                |                               |
| Legend:                                                                                                                                        |                                                                                                                                                                    |                               |
| ZC – Zoning Certificate<br>AUP – Administrative Use Permit *<br>UP(PH) – Use Permit, public hearing required<br>Prohibited – Use not permitted | * For the purposes of the C-T zoning district, uses established by AUP require public notification of a decision within a 300-foot radius of the subject property. |                               |

Section 15. That Berkeley Municipal Code Section 23E.56.060.C is amended to read as follows:

**23E.56.060 Use Limitations\***

C. On-premises service and consumption of distilled alcoholic beverages shall be permitted with seated food service only.

Section 16. That Berkeley Municipal Code Section 23E.60.030 is amended to read as follows:

**23E.60.030 Uses Permitted**

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

| Table 23E.60.030         |                |                               |
|--------------------------|----------------|-------------------------------|
| Use and Required Permits |                |                               |
| Use                      | Classification | Special Requirements (if any) |
| Retail Sales             |                |                               |

| <b>Table 23E.60.030</b>                                                 |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                         |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Use</b>                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                                                                                                                                                                                                |
| All Retail Sales Uses, except those listed below                        | ZC*                   | As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)                                                                                                                                                                                                                                                                                                           |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops | UP(PH)                | Includes sale for off-site consumption at restaurants                                                                                                                                                                                                                                                                                                                                               |
| Department Stores<br><br>Over 3,000 s.f.                                | ZC*<br><br>Prohibited |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Drugstores                                                              | ZC*                   | A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located. |
| Firearm/Munitions Businesses                                            | UP(PH)                | Prohibited on any property devoted to residential use                                                                                                                                                                                                                                                                                                                                               |
| Pawn Shops                                                              | Prohibited            |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Pet Stores including Sales and Grooming of Animals (but not Boarding)   | UP(PH)                |                                                                                                                                                                                                                                                                                                                                                                                                     |
| Smoke Shops                                                             | UP(PH)                | Prohibited if within 1,400 feet of a school or public park                                                                                                                                                                                                                                                                                                                                          |
| <b>Personal and Household Services</b>                                  |                       |                                                                                                                                                                                                                                                                                                                                                                                                     |
| All Personal and Household Services, except those listed below          | ZC*                   | As defined in Sub-title F, except those otherwise listed (does not include Massage)                                                                                                                                                                                                                                                                                                                 |

| <b>Table 23E.60.030</b>                                                              |                       |                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                      |                       |                                                                                                                                                                                                                                    |
| <b>Use</b>                                                                           | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                               |
| Laundromats                                                                          | UP(PH)                |                                                                                                                                                                                                                                    |
| Veterinary Clinics                                                                   | UP(PH)                | Including Pet Hospitals                                                                                                                                                                                                            |
| <b>Offices</b>                                                                       |                       |                                                                                                                                                                                                                                    |
| Financial Services, Retail<br>(Banks)                                                | UP(PH)                |                                                                                                                                                                                                                                    |
| Insurance Agents, Title<br>Companies, Real Estate<br>Agents, Travel Agents           | ZC*                   | When located on the ground floor adjacent to a street frontage,<br>storefront windows required to include a window display or to be<br>transparent and provide pedestrian viewing a minimum of 10 feet<br>into the storefront area |
| Medical Practitioners, including<br>Holistic Health & Mental Health<br>Practitioners | UP(PH)                | Subject to parking requirements; see Section 23E.60.080                                                                                                                                                                            |
| Non-Chartered Financial<br>Institutions                                              | Prohibited            |                                                                                                                                                                                                                                    |
| Other Professionals, and<br>Government, Institutions,<br>Utilities                   | AUP                   | When located on the ground floor adjacent to a street frontage,<br>storefront windows required to include a window display or to be<br>transparent and provide pedestrian viewing a minimum of 10 feet<br>into the storefront area |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>           |                       |                                                                                                                                                                                                                                    |
| Adult-oriented Businesses                                                            | Prohibited            |                                                                                                                                                                                                                                    |
| Alcoholic Beverage Service of<br>beer and wine incidental to<br>seated food service  | ZC                    | For on-site consumption only                                                                                                                                                                                                       |

| <b>Table 23E.60.030</b>                                               |                       |                                                                                                                                                   |
|-----------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                       |                       |                                                                                                                                                   |
| <b>Use</b>                                                            | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                              |
| Alcoholic Beverage Service (no Bars, Cocktail Lounges, & Taverns)     | UP(PH)                | Service of distilled alcoholic beverages may be approved for Food Service Establishments providing seated food service; see Section 23E.60.060 D1 |
| Amusement Device Arcades                                              | Prohibited            |                                                                                                                                                   |
| Commercial Recreation Center<br>Under 3,000 s.f.<br>Over 3,000 s.f.   | AUP<br>UP(PH)         | Outdoor use requires UP(PH)                                                                                                                       |
| Dance, Exercise, Martial Arts and Music Studios                       | AUP                   |                                                                                                                                                   |
| Entertainment Establishments                                          | UP(PH)                | Including Nightclubs                                                                                                                              |
| Food Service Establishments<br><br>Under 1,000 s.f.<br>Over 1,000 s.f | ZC<br>AUP             | Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property. |
| Group Class Instruction for Business, Vocational or Other Purposes    | AUP                   |                                                                                                                                                   |
| Gyms and Health Clubs                                                 | AUP                   |                                                                                                                                                   |

| <b>Table 23E.60.030</b>                                             |                       |                                                                                                         |
|---------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                     |                       |                                                                                                         |
| <b>Use</b>                                                          | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                    |
| Hotels, Tourist                                                     | UP(PH)                | Including Inns, Bed and Breakfasts and Hostels, subject to parking requirements; see Section 23E.60.080 |
| Motels, Tourist                                                     | Prohibited            |                                                                                                         |
| Theaters                                                            | Prohibited            | Including Motion Pictures and Stage Performance                                                         |
| <b>Automobile and Other Vehicle Oriented Uses</b>                   |                       |                                                                                                         |
| Automobile Parts Stores                                             | ZC*                   | Excluding service of auto parts                                                                         |
| Automobile Repair and Service, including Parts Service              | Prohibited            |                                                                                                         |
| Automobile Sales and Rentals                                        | Prohibited            |                                                                                                         |
| Automobile Washes, Mechanical or Self-Service                       | Prohibited            |                                                                                                         |
| Automobile Wrecking Establishments                                  | Prohibited            |                                                                                                         |
| Gasoline/Automobile Fuel Stations                                   | UP(PH)                |                                                                                                         |
| Motorcycle Stores (sales or service)                                | Prohibited            |                                                                                                         |
| Recreational Vehicle and Trailers Sales and Rental, including Boats | Prohibited            |                                                                                                         |
| Tire Sales/Service Stores                                           | Prohibited            |                                                                                                         |
| <b>Parking, Outdoor and Exterior Service Window Uses</b>            |                       |                                                                                                         |



| Table 23E.60.030                                                                                           |                           |                                                                                   |
|------------------------------------------------------------------------------------------------------------|---------------------------|-----------------------------------------------------------------------------------|
| Use and Required Permits                                                                                   |                           |                                                                                   |
| Use                                                                                                        | Classification            | Special Requirements (if any)                                                     |
| Activities or Storage Outside of a building<br><br>Not abutting R-District<br><br>When abutting R-District | <br><br>AUP<br><br>UP(PH) |                                                                                   |
| Automatic Teller Machines (exterior and when part of a Retail Financial Service)                           | AUP                       | Limited to 2 machines and only when off-street parking is provided                |
| Drive-in Uses                                                                                              | UP(PH)                    | Which provide service to customers in their cars. See definition in Sub-title 23F |
| Parking Lots<br><br>5 or fewer Off-street Parking Spaces<br><br>More than 5 Off-street Parking Spaces      | <br><br>AUP<br><br>UP(PH) |                                                                                   |
| Recycling Redemption Centers                                                                               | AUP                       |                                                                                   |
| Outdoor Cafe Seating<br><br>When seating not abutting R-District<br><br>When seating abutting R-District   | <br><br>ZC<br><br>AUP     |                                                                                   |
| Combination Commercial/Residential Uses                                                                    |                           |                                                                                   |
| Live/Work Units<br><br>Not requiring a UP under Chapter 23E.20                                             | <br><br>ZC                |                                                                                   |

| <b>Table 23E.60.030</b>                                                                 |                       |                                                              |
|-----------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                              |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                         |
| Requiring a UP under Chapter 23E.20                                                     | UP(PH)                |                                                              |
| Mixed Use Developments (Residential/Commercial)                                         | UP(PH)                | Subject to Section 23E.60.070.E                              |
| <b>Uses Incidental to a Permitted Use</b>                                               |                       |                                                              |
| Amusement Devices (up to three)                                                         | UP(PH)                |                                                              |
| Food or Beverage for Immediate Consumption                                              | UP(PH)                |                                                              |
| Live Entertainment<br>Unamplified<br>Amplified                                          | ZC<br>AUP             | Also subject to the limitations under Section 23E.60.060.D.2 |
| Manufacturing Uses                                                                      | AUP                   |                                                              |
| Storage of Goods (over 25% of gross floor area)                                         | AUP                   |                                                              |
| Wholesale Activities                                                                    | AUP                   |                                                              |
| <b>Uses Permitted in Residential Districts</b>                                          |                       |                                                              |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                    |                                                              |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070  |

| <b>Table 23E.60.030</b>                                           |                       |                                                            |
|-------------------------------------------------------------------|-----------------------|------------------------------------------------------------|
| <b>Use and Required Permits</b>                                   |                       |                                                            |
| <b>Use</b>                                                        | <b>Classification</b> | <b>Special Requirements (if any)</b>                       |
| Accessory Uses and Structures                                     | Per R-3 District      | See Table 23D.36.030                                       |
| Accessory Buildings and Structures with Urban Agriculture         | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060 |
| Child Care Centers                                                | UP(PH)                |                                                            |
| Clubs, Lodges                                                     | Prohibited            |                                                            |
| Community Centers                                                 | UP(PH)                |                                                            |
| Dwelling Units, subject to R-3 Standards                          | UP(PH)                | Standards may be modified under Section 23E.60.070.F       |
| Group Living Accommodations, subject to R-3 Standards             | UP(PH)                | Standards may be modified under Section 23E.60.070.F       |
| Hospitals                                                         | Prohibited            |                                                            |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels | UP(PH)                |                                                            |
| Libraries                                                         | UP(PH)                | Subject to parking requirements; see Section 23E.60.080    |
| Nursing Homes                                                     | UP(PH)                | Subject to parking requirements; see Section 23E.60.080    |
| Parks and Playgrounds                                             | ZC                    |                                                            |
| Public Safety and Emergency Services                              | UP(PH)                |                                                            |
| Religious Assembly Uses                                           | UP(PH)                |                                                            |
| Schools, Public or Private                                        | UP(PH)                |                                                            |

| <b>Table 23E.60.030</b>             |                       |                                                                                                                                                                                 |
|-------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>     |                       |                                                                                                                                                                                 |
| <b>Use</b>                          | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                            |
| Senior Congregate Housing           |                       | Change of use from an existing dwelling unit                                                                                                                                    |
| Six or fewer persons                | ZC                    |                                                                                                                                                                                 |
| Seven or more persons               | AUP                   |                                                                                                                                                                                 |
| New Construction                    | UP(PH)                |                                                                                                                                                                                 |
| <b>Miscellaneous Uses</b>           |                       |                                                                                                                                                                                 |
| Automatic Teller Machines           | Prohibited            | When not a part of a Retail Financial Service                                                                                                                                   |
| Cafeteria, Employee or Residential  | UP(PH)                |                                                                                                                                                                                 |
| Cemeteries, Crematories, Mausoleums | Prohibited            |                                                                                                                                                                                 |
| Columbaria                          | AUP                   | Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building |
| Circus or Carnival                  | UP(PH)                |                                                                                                                                                                                 |
| Commercial Excavation               | UP(PH)                | Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas                                                        |
| Dry Cleaning and Laundry Plants     | Prohibited            |                                                                                                                                                                                 |
| Emergency Shelter                   |                       | See Chapter 23C.10.                                                                                                                                                             |
| Up to 25 beds                       | ZC                    |                                                                                                                                                                                 |
| More than 25 beds                   | UP(PH)                |                                                                                                                                                                                 |
| Kennels or Pet Boarding             | Prohibited            |                                                                                                                                                                                 |
| Laboratories, Testing               | Prohibited            | Except medical office laboratories                                                                                                                                              |

| Table 23E.60.030                                                                                                                                                                             |                                                                       |                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|----------------------------------------------------------------|
| Use and Required Permits                                                                                                                                                                     |                                                                       |                                                                |
| Use                                                                                                                                                                                          | Classification                                                        | Special Requirements (if any)                                  |
| Mortuaries                                                                                                                                                                                   | Prohibited                                                            |                                                                |
| Public Utility Substations, Tanks                                                                                                                                                            | UP(PH)                                                                |                                                                |
| Radio, Television or Audio/Sound Recording and/or Broadcast Studios                                                                                                                          | UP(PH)                                                                |                                                                |
| Wireless Telecommunications Facilities<br><br>Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District | AUP                                                                   | Subject to the requirements and findings of Section 23C.17.100 |
| All Other Telecommunication Facilities                                                                                                                                                       | UP(PH)                                                                | Subject to the requirements and findings of Section 23C.17.100 |
| Urban Agriculture                                                                                                                                                                            |                                                                       | 23C.26                                                         |
| Low-Impact Urban Agriculture (LIUA)                                                                                                                                                          | ZC                                                                    |                                                                |
| High-Impact Urban Agriculture (HIUA)                                                                                                                                                         | AUP                                                                   |                                                                |
| Legend:                                                                                                                                                                                      |                                                                       |                                                                |
| ZC – Zoning Certificate                                                                                                                                                                      | *Change of Use of floor area over 2,000 sq. ft. shall require an AUP. |                                                                |
| AUP – Administrative Use Permit                                                                                                                                                              |                                                                       |                                                                |
| UP(PH) – Use Permit, public                                                                                                                                                                  |                                                                       |                                                                |

| Table 23E.60.030                                   |                |                               |
|----------------------------------------------------|----------------|-------------------------------|
| Use and Required Permits                           |                |                               |
| Use                                                | Classification | Special Requirements (if any) |
| hearing required<br>Prohibited – Use not permitted |                |                               |

B. Any use not listed that is compatible with the purposes of the C-SO District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-SO District shall be prohibited.

C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the permit requirements as listed in the legend of Table 23E.60.030.

Section 17. That Berkeley Municipal Code Section 23E.60.060.D is amended to read as follows:

**23E.60.060 Use Limitations\***

D. Adult-oriented Businesses are not permitted, as the entire District is within the location limitations of Section 23E.16.030. Amusement Arcades and Non-Chartered Financial Institutions are not permitted in this District. Live/Work Uses shall be subject to the requirements of Chapter 23E.20, in addition to the requirements of this District. Alcoholic Beverage Service uses, except as provided for below, are not permitted:

1. No on-premises service and consumption of distilled alcoholic beverages shall be allowed except with seated food service and subject to obtaining a Use Permit.
2. Food Service Establishments shall have no live entertainment other than unamplified music, poetry reading, comedy or other quiet activities.

Section 18. That Berkeley Municipal Code Section 23E.60.080.B is amended to read as follows:

**23E.60.080 Parking -- Number of Spaces**

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.60.080 shall

meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area.

| Table 23E.60.080                |                                                               |
|---------------------------------|---------------------------------------------------------------|
| Parking Required                |                                                               |
| Use                             | Number of spaces                                              |
| Libraries                       | One per 500 sq. ft. of floor area that is publicly accessible |
| Medical Practitioner Offices    | One per 300 sq. ft. of floor area                             |
|                                 |                                                               |
| Residential Uses, Nursing Homes | Refer to R-3 Standards, Section 23D.36.080                    |

Section 19. That Berkeley Municipal Code Section 23E.64.030.A is amended to read as follows:

**23E.64.030 Uses Permitted**

A. The following table sets forth the Permit required for each listed item. Each use or structure shall be subject to a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

| Table 23E.64.030                                                  |                                                               |             |               |                               |
|-------------------------------------------------------------------|---------------------------------------------------------------|-------------|---------------|-------------------------------|
| Use and Required Permits                                          |                                                               |             |               |                               |
| Use                                                               | Permits Required to Establish, Expand or Change Use (sq. ft.) |             |               | Special Requirements (if any) |
|                                                                   | Retail Sales                                                  | Under 3,500 | 3,500-7,500   | 7,500 or more                 |
| Retail uses as defined in Sub-title 23F, except otherwise listed. |                                                               |             |               |                               |
|                                                                   | Under 3,500                                                   | 3,500-7,500 | 7,500 or more |                               |

| Table 23E.64.030                                                              |                                                               |             |               |                                                            |
|-------------------------------------------------------------------------------|---------------------------------------------------------------|-------------|---------------|------------------------------------------------------------|
| Use and Required Permits                                                      |                                                               |             |               |                                                            |
| Use                                                                           | Permits Required to Establish, Expand or Change Use (sq. ft.) |             |               | Special Requirements (if any)                              |
|                                                                               | All Retail Sales Uses, except those specified below           | ZC          | AUP           | UP(PH)*                                                    |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops       | UP(PH)                                                        |             |               | Includes sale for off-site consumption at restaurants      |
| Firearm/Munitions Businesses                                                  | UP(PH)                                                        |             |               | Prohibited on any property devoted to residential use      |
| Pawn Shops, including Auction Houses                                          | UP(PH)                                                        |             |               |                                                            |
| Smoke Shops                                                                   | UP(PH)                                                        |             |               | Prohibited if within 1,400 feet of a school or public park |
| Personal and Household Services                                               |                                                               |             |               |                                                            |
|                                                                               | Under 3,000                                                   | 3,000-5,000 | 5,000 or more |                                                            |
| All Personal/Household Services, except as specified below                    | ZC                                                            | AUP         | UP(PH)        | As defined in Sub-title 23F, unless otherwise specified    |
| Laundromats and Cleaners                                                      | AUP                                                           |             | UP(PH)        | Dry Cleaning plants prohibited                             |
| Veterinary Clinics                                                            | UP(PH)                                                        |             |               |                                                            |
| Office Uses                                                                   |                                                               |             |               |                                                            |
| Office uses other than banks prohibited on ground floors in designated nodes. |                                                               |             |               |                                                            |



| Table 23E.64.030                                                                 |                                                               |             |               |                                                                                                                           |
|----------------------------------------------------------------------------------|---------------------------------------------------------------|-------------|---------------|---------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                         |                                                               |             |               |                                                                                                                           |
| Use                                                                              | Permits Required to Establish, Expand or Change Use (sq. ft.) |             |               | Special Requirements (if any)                                                                                             |
|                                                                                  | Under 3,000                                                   | 3,000-5,000 | 5,000 or more |                                                                                                                           |
| All Office Uses, except those specified below                                    | ZC                                                            | AUP         | UP(PH)        |                                                                                                                           |
| Business Support Services                                                        | ZC                                                            | AUP         | UP(PH)        | See definition in Sub-title F for permitted uses                                                                          |
| Financial Services, Retail (Banks)                                               | AUP                                                           |             |               |                                                                                                                           |
| Medical Practitioners, including Holistic Health and Mental Health Practitioners | ZC                                                            | AUP         | UP(PH)        | Subject to parking requirements under Section 23E.64.080.F                                                                |
| Non-Chartered Financial Institutions                                             | UP(PH)                                                        |             |               | Subject to additional requirements; see Section 23E.16.080                                                                |
| Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses              |                                                               |             |               |                                                                                                                           |
| Adult-oriented Businesses                                                        | UP(PH)                                                        |             |               | Prohibited on lots with frontage on San Pablo Ave. Other locations subject to distance requirements of Section 23E.16.030 |
| Alcoholic Beverage Service of beer and wine incidental to seated food service    | ZC                                                            |             |               | For on-site consumption only                                                                                              |
| Alcoholic Beverage Service                                                       | UP(PH)                                                        |             |               | Including Bars, Cocktail Lounges and Taverns. Also includes service of distilled spirits incidental to food service       |

| Table 23E.64.030                                |                                                               |                                                                                                                                         |
|-------------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                        |                                                               |                                                                                                                                         |
| Use                                             | Permits Required to Establish, Expand or Change Use (sq. ft.) | Special Requirements (if any)                                                                                                           |
| Amusement Device<br>Arcades                     | UP(PH)                                                        | Subject to additional requirements; see Section 23E.16.050                                                                              |
| Commercial Recreation Center                    |                                                               | Outdoor use requires UP(PH)                                                                                                             |
| Under 5,000 s.f.                                | ZC                                                            |                                                                                                                                         |
| Between 5,000--10,000 s.f.                      | AUP                                                           |                                                                                                                                         |
| Over 10,000 s.f.                                | UP(PH)                                                        |                                                                                                                                         |
| Dance, Exercise, Martial Arts and Music Studios | ZC                                                            | UP(PH) if 7,500 or more sq. ft.                                                                                                         |
| Entertainment Establishments                    | UP(PH)                                                        | Includes Nightclubs                                                                                                                     |
| Food Service Establishments                     |                                                               | Food service drive-through prohibited on San Pablo. See Section 23E.64.040.C and E. Also see Section 23E.64.090.H for special findings. |
| Under 1,500 s.f.                                | ZC                                                            |                                                                                                                                         |
| Over 1,500 s.f.                                 | AUP                                                           |                                                                                                                                         |
|                                                 |                                                               |                                                                                                                                         |
|                                                 |                                                               |                                                                                                                                         |

| Table 23E.64.030                                                                                                                                                                                             |                                                                             |                                                                                   |                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------|
| Use and Required Permits                                                                                                                                                                                     |                                                                             |                                                                                   |                                                           |
| Use                                                                                                                                                                                                          | Permits Required to Establish, Expand or Change Use (sq. ft.)               |                                                                                   | Special Requirements (if any)                             |
| Group Class Instruction for Business, Vocational, or Other Purposes                                                                                                                                          | ZC                                                                          |                                                                                   |                                                           |
| Gyms and Health Clubs                                                                                                                                                                                        | ZC                                                                          |                                                                                   | UP(PH) if 7,500 or more sq. ft.                           |
| Hotels, Tourist, including Inns, Bed and Breakfasts, and Hostels                                                                                                                                             | UP(PH)                                                                      |                                                                                   | Subject to parking requirements; see Section 23E.64.080.F |
| Motels, Tourist                                                                                                                                                                                              | UP(PH)                                                                      |                                                                                   | Subject to parking requirements; see Section 23E.64.080.F |
| Theaters, including Motion Pictures and Stage Performance                                                                                                                                                    | UP(PH)                                                                      |                                                                                   |                                                           |
| <b>Automobile and Other Vehicle Oriented Uses</b>                                                                                                                                                            |                                                                             |                                                                                   |                                                           |
| On lots with frontage on San Pablo Avenue, changes of use from uses other than Automobile and Other Vehicle Oriented Uses prohibited, as provided in Section 23E.64.060.E. Auto parts sales is a retail use. |                                                                             |                                                                                   |                                                           |
|                                                                                                                                                                                                              | Less than 5,000 sq. ft. floor area and less than 10,000 sq. ft. of lot area | Either 5,000 or more sq. ft. of floor area; or 10,000 or more sq. ft. of lot area |                                                           |

| Table 23E.64.030                                                    |                                |        |                                                                |
|---------------------------------------------------------------------|--------------------------------|--------|----------------------------------------------------------------|
| Use and Required Permits                                            |                                |        |                                                                |
| Use                                                                 | Permits Required to Establish, |        | Special Requirements                                           |
|                                                                     | Expand or Change Use (sq. ft.) |        |                                                                |
| Automobile and Truck Rentals                                        | AUP                            | UP(PH) | Prohibited in designated nodes                                 |
| Automobile Repair and Service, including Parts Service              | AUP                            | UP(PH) |                                                                |
| Automobile Restoration, Antique and Classic Cars                    | AUP                            | UP(PH) |                                                                |
| Automobile Sales                                                    | AUP                            | UP(PH) |                                                                |
| Automobile Used Car Establishments                                  | UP(PH)                         |        | Prohibited in designated nodes unless principally in buildings |
| Automobile Washes, Mechanical or Self-Service                       | UP(PH)                         |        | Prohibited in designated nodes                                 |
| Automobile Wrecking Establishments                                  | Prohibited                     |        |                                                                |
| Gasoline/Automobile Fuel Stations                                   | UP(PH)                         |        |                                                                |
| Motorcycle Stores, including Sales, Parts and/or Service            | UP(PH)                         |        |                                                                |
| Recreational Vehicle and Trailers Sales and Rental, including Boats | AUP                            | UP(PH) |                                                                |
| Tire Sales/Service Stores                                           | UP(PH)                         |        | Prohibited in designated nodes; see Section 23E.64.050.C       |

| Table 23E.64.030                                                                                                                                                                                   |                                                                  |                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Use and Required Permits                                                                                                                                                                           |                                                                  |                                                                             |
| Use                                                                                                                                                                                                | Permits Required to Establish,<br>Expand or Change Use (sq. ft.) | Special Requirements<br>(if any)                                            |
| Parking, Outdoor and Exterior Service Window Uses                                                                                                                                                  |                                                                  |                                                                             |
| Activities or Storage outside of a building<br><br>When not abutting R-District and using 10,000 sq. ft. or less of lot area<br><br>When abutting R-District or 10,000 sq. ft. of lot area or more | AUP<br><br><br>UP(PH)                                            | Activities must be permitted or incidental to permitted use in the District |
| Automatic Teller Machines                                                                                                                                                                          | AUP                                                              | Exterior and when part of a Retail Financial Service                        |
| Drive-in uses                                                                                                                                                                                      | Prohibited                                                       | Providing service to customers in their cars                                |
| Open Air Markets                                                                                                                                                                                   | UP(PH)                                                           | Prohibited in designated nodes. See Section 23E.64.050.C                    |
| Parking Lots<br><br>10 or fewer spaces<br><br>11 or more spaces                                                                                                                                    | AUP<br><br>UP(PH)                                                |                                                                             |
| Recycling Redemption Centers                                                                                                                                                                       | AUP                                                              |                                                                             |
| Outdoor Cafe Seating<br><br>When seating not abutting R-District<br><br>When seating abutting R-District                                                                                           | ZC<br><br>AUP                                                    |                                                                             |

| Table 23E.64.030                                                                                                                                                                   |                                                                                           |                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|----------------------------------------|
| Use and Required Permits                                                                                                                                                           |                                                                                           |                                        |
| Use                                                                                                                                                                                | Permits Required to Establish,<br>Expand or Change Use (sq. ft.)                          | Special Requirements<br>(if any)       |
| Combination Commercial/Residential and other Mixed Uses                                                                                                                            |                                                                                           |                                        |
| The area within a Live/Work Unit, including both residential and non-residential space, shall be not less than 800 sq. ft. A UP(PH) is required in some cases; see Chapter 23E.20. |                                                                                           |                                        |
| Live/Work Units                                                                                                                                                                    |                                                                                           |                                        |
| 9 or fewer                                                                                                                                                                         | AUP                                                                                       | If not changed from a dwelling unit    |
| 10 or more                                                                                                                                                                         | UP(PH)                                                                                    | And/or if changed from a dwelling unit |
| Mixed Use Developments                                                                                                                                                             |                                                                                           |                                        |
| Incorporating residential and retail; where the retail space comprises at least 15% but not more than 33% of the floor area                                                        | AUP if less than 20,000 sq. ft. floor area<br>UP(PH) if 20,000 sq. ft. or more floor area |                                        |
| Other Mixed Use Developments incorporating residential use and other permitted uses                                                                                                | ZC if less than 5,000 sq. ft.                                                             | AUP if 5,000-9,000 sq. ft.             |
| Uses Incidental to a Permitted Use                                                                                                                                                 |                                                                                           |                                        |
| Amusement Devices (up to 3)                                                                                                                                                        | AUP                                                                                       |                                        |
| Food or Beverage for Immediate Consumption                                                                                                                                         | ZC                                                                                        |                                        |
| Live Entertainment                                                                                                                                                                 |                                                                                           |                                        |

| Table 23E.64.030                                                                        |                                                                  |                                                                                         |
|-----------------------------------------------------------------------------------------|------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Use and Required Permits                                                                |                                                                  |                                                                                         |
| Use                                                                                     | Permits Required to Establish,<br>Expand or Change Use (sq. ft.) | Special Requirements<br>(if any)                                                        |
| Unamplified                                                                             | ZC                                                               |                                                                                         |
| Amplified                                                                               | UP(PH)                                                           | See performance standards in Section 23E.64.070.E                                       |
| Storage of Goods (over 25% of gross floor area)                                         | AUP                                                              |                                                                                         |
| Residential and Related Uses                                                            |                                                                  |                                                                                         |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                                                               |                                                                                         |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                                                              | Subject to making applicable findings in Section 23C.24.070                             |
| Additions, Major Residential                                                            | AUP                                                              | See definition in Sub-title 23F. Subject to required finding under Section 23E.64.090.G |
| Short-Term Rental                                                                       | ZC                                                               | Subject to requirements of Chapter 23C.22                                               |
| Child Care; Family Day Care                                                             |                                                                  |                                                                                         |
| Small Family Day Care Homes of 8 or fewer children                                      | ZC                                                               |                                                                                         |
| Large Family Day Care Homes of 9 to 14 children                                         | AUP                                                              |                                                                                         |
| Child Care Centers                                                                      | UP(PH)                                                           |                                                                                         |

| Table 23E.64.030                                           |                                                               |                                                           |
|------------------------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------------|
| Use and Required Permits                                   |                                                               |                                                           |
| Use                                                        | Permits Required to Establish, Expand or Change Use (sq. ft.) | Special Requirements (if any)                             |
| Clubs, Lodges                                              | UP(PH)                                                        |                                                           |
| Community Care Facilities/Homes                            | ZC                                                            |                                                           |
| Community Centers                                          | UP(PH)                                                        |                                                           |
| Dwelling Units                                             | UP(PH)                                                        | Subject to Development Standards under Section 23E.64.070 |
| Group Living Accommodations                                | UP(PH)                                                        | Subject to Development Standards under Section 23E.64.070 |
| Home Occupations                                           |                                                               |                                                           |
| Low Impact                                                 | ZC                                                            | If the requirements of Section 23C.16.020 are met         |
| Moderate Impact, teaching-related                          | AUP                                                           | Subject to the requirements of Section 23C.16.030.A       |
| Moderate Impact                                            | UP(PH)                                                        | Subject to the requirements of Section 23C.16.030.B       |
| Hospitals                                                  | UP(PH)                                                        | Subject to parking requirements; see Section 23E.64.080.F |
| Hot Tubs, Jacuzzis, Spas                                   | AUP                                                           | See Section 23D.08.070.C                                  |
| Hotels, Residential, including Single Room Occupancy (SRO) | UP(PH)                                                        |                                                           |
| Libraries                                                  | UP(PH)                                                        | Subject to parking requirements; see Section 23E.64.080.F |
| Nursing Homes                                              | UP(PH)                                                        |                                                           |



| Table 23E.64.030                                                     |                                                                  |                                                               |
|----------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------------------|
| Use and Required Permits                                             |                                                                  |                                                               |
| Use                                                                  | Permits Required to Establish,<br>Expand or Change Use (sq. ft.) | Special Requirements<br>(if any)                              |
| Parks and Playgrounds                                                | AUP                                                              |                                                               |
| Public Safety and<br>Emergency Services                              | UP(PH)                                                           |                                                               |
| Religious Assembly Uses                                              | AUP                                                              |                                                               |
| Schools, Public or Private                                           | UP(PH)                                                           |                                                               |
| Senior Congregate Housing                                            |                                                                  | Changes of use from an existing dwelling unit                 |
| Six or fewer persons                                                 | ZC                                                               |                                                               |
| Seven or more persons                                                | AUP                                                              |                                                               |
| New Construction                                                     | UP(PH)                                                           |                                                               |
| All other Residential<br>Accessory Structures and<br>Uses not listed | Per R-3 District                                                 | See Table 23D.36.030                                          |
| Accessory Buildings and<br>Structures with Urban<br>Agriculture      | ZC                                                               | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050,<br>and 23D.08.060 |
| <b>Miscellaneous Uses</b>                                            |                                                                  |                                                               |
| Automatic Teller Machines                                            | AUP                                                              | When not part of a Retail Financial Service                   |
| Cafeteria, Employee or<br>Residential                                | AUP                                                              |                                                               |
| Cemeteries and<br>Mausoleums                                         | Prohibited                                                       |                                                               |

| Table 23E.64.030                                                |                                                                       |                                                                                                                                                                                 |
|-----------------------------------------------------------------|-----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                        |                                                                       |                                                                                                                                                                                 |
| Use                                                             | Permits Required to Establish, Expand or Change Use (sq. ft.)         | Special Requirements (if any)                                                                                                                                                   |
| Columbaria                                                      | AUP                                                                   | Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building |
| Circus or Carnival                                              | UP(PH)                                                                | Prohibited in designated nodes. See Section 23E.64.050.C                                                                                                                        |
| Commercial Excavation                                           | Prohibited                                                            | Including earth, gravel, minerals or other building materials including drilling for, or removal of, oil or natural gas                                                         |
| Dry Cleaning and Laundry Plants                                 | Prohibited                                                            |                                                                                                                                                                                 |
| Emergency Shelter<br><br>Up to 25 beds<br><br>More than 25 beds | <br><br>ZC<br><br>UP(PH)                                              | See Chapter 23C.10.                                                                                                                                                             |
| Kennels or Pet Boarding                                         | UP(PH)                                                                | Prohibited on ground floor in designated node                                                                                                                                   |
| Laboratories, Commercial Physical or Biological                 | Prohibited                                                            | See Section 23E.64.030.C                                                                                                                                                        |
| Laboratories, Testing (including Cannabis Testing)              | AUP if less than 10,000 sq. ft.<br>UP(PH) if more than 10,000 sq. ft. |                                                                                                                                                                                 |
| Mortuaries and Crematories                                      | UP(PH)                                                                |                                                                                                                                                                                 |
| Public Utility Substations, Buildings, Tanks                    | UP(PH)                                                                | Prohibited in designated node. See Section 23E.64.050.C                                                                                                                         |

| Table 23E.64.030                                                                                                                               |                                                               |                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|-------------------------------------------------------------------------|
| Use and Required Permits                                                                                                                       |                                                               |                                                                         |
| Use                                                                                                                                            | Permits Required to Establish, Expand or Change Use (sq. ft.) | Special Requirements (if any)                                           |
| Radio, Television, or Audio/Sound Recording and/or Broadcast Studios                                                                           | UP(PH)                                                        | Prohibited on ground floor in designated node. See Section 23E.64.050.C |
| Wireless Telecommunications Facilities                                                                                                         | AUP                                                           | Subject to the requirements and findings of Section 23C.17.100          |
| Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District | UP(PH)                                                        | Subject to the requirements and findings of Section 23C.17.100          |
| All Other Telecommunication Facilities                                                                                                         |                                                               |                                                                         |
| Urban Agriculture                                                                                                                              |                                                               | 23C.26                                                                  |
| Low-Impact Urban Agriculture (LIUA)                                                                                                            | ZC                                                            |                                                                         |
| High-Impact Urban Agriculture (HIUA)                                                                                                           | ZUP                                                           |                                                                         |
| Light Manufacturing and Wholesale Trade Uses                                                                                                   |                                                               |                                                                         |
| Manufacturing uses prohibited on ground floors in designated nodes. See Section 23E.64.050.C                                                   |                                                               |                                                                         |
| Light Manufacturing and Wholesale Trade Uses                                                                                                   |                                                               |                                                                         |

| Table 23E.64.030                                               |                                                               |                               |
|----------------------------------------------------------------|---------------------------------------------------------------|-------------------------------|
| Use and Required Permits                                       |                                                               |                               |
| Use                                                            | Permits Required to Establish, Expand or Change Use (sq. ft.) | Special Requirements (if any) |
| (including Cannabis Distributers)<br><br>5,000 or less sq. ft. | AUP                                                           |                               |
| 5,000 sq. ft. or more                                          | UP(PH)                                                        |                               |
| All Other Manufacturing Uses                                   | UP(PH)                                                        |                               |
| Warehouses or Storage (including Mini-storage Warehouses)      | Prohibited                                                    |                               |
| Legend:                                                        |                                                               |                               |
| ZC – Zoning Certificate                                        | UP(PH) – Use Permit, public hearing required                  |                               |
| AUP – Administrative Use Permit                                | Prohibited – Use not permitted                                |                               |
|                                                                |                                                               |                               |

Section 20. That Berkeley Municipal Code Section 23E.64.080.B is amended to read as follows:

**23E.64.080 Off-Street Parking and Loading Requirements**

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.64.080 shall meet the requirements listed, for newly constructed floor area except as otherwise modified in this subsection, and Subsections F through I below.

| <b>Table 23E.64.080</b>                                                                                |                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Parking Required*</b>                                                                               |                                                                                                                                                                                                                                                                                                                                             |
| Use                                                                                                    | Number of spaces                                                                                                                                                                                                                                                                                                                            |
| Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses and Senior Congregate Housing | One per each five residents; plus one for manager                                                                                                                                                                                                                                                                                           |
| Dwelling Units                                                                                         | One per unit, except as modified by provisions for shared parking in Section 23E.64.080.G; 75% less for Seniors (see below)                                                                                                                                                                                                                 |
| Hospitals                                                                                              | One per each four beds; plus one per each three employees                                                                                                                                                                                                                                                                                   |
| Hotels                                                                                                 | One per each three guest/sleeping rooms or suites; plus one per each three employees                                                                                                                                                                                                                                                        |
| Libraries                                                                                              | One per 500 sq. ft. of floor area that is publicly accessible                                                                                                                                                                                                                                                                               |
| Live/Work Units                                                                                        | One per unit, provided, however, that if any workers and/or clients are permitted in any work area, there shall be one additional parking space for the first 1,000 sq. ft. of work area, one further parking space for each additional 750 sq. ft. and subject to any additional requirements for parking pursuant to Section 23E.20.040.B |
| Manufacturing uses (assembly, production, storage and testing space only)                              | One per 1,000 sq. ft. of floor area                                                                                                                                                                                                                                                                                                         |
| Medical Practitioner Offices                                                                           | One per 300 sq. ft. of floor area                                                                                                                                                                                                                                                                                                           |
| Motels                                                                                                 | One per each guest/sleeping room; plus one space for owner or manager**                                                                                                                                                                                                                                                                     |
|                                                                                                        |                                                                                                                                                                                                                                                                                                                                             |
| Wholesale Trade                                                                                        | One per 1,000 sq. ft. of floor area                                                                                                                                                                                                                                                                                                         |

|                                                                                  |                  |
|----------------------------------------------------------------------------------|------------------|
| <b>Table 23E.64.080</b>                                                          |                  |
| <b>Parking Required*</b>                                                         |                  |
| Use                                                                              | Number of spaces |
| *See Subsection J for substitutions of up to 10% with bicycle/motorcycle parking |                  |
| **Required parking shall be on the same lot as the building it serves            |                  |

Section 21. That Berkeley Municipal Code Section 23E.64.090.H is amended to read as follows:

**23E.64.090 Findings**

H. Before approving an Administrative Use Permit for Food Service Establishments on a lot with frontage on San Pablo Avenue, the Zoning Officer shall make the findings contained in Section 23B.28.050 as well as the findings that:

1. The project does not conflict with the goals and policies of the C-W District; and
2. The location, size, appearance and signage of the proposed use will not adversely affect the San Pablo Avenue Corridor; and
3. The project supports pedestrian-oriented development; and
4. The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of Food Service Establishment development, including, but not limited to: increased traffic, litter, and noise.
5. For projects which include construction of new buildings, the Zoning Officer shall also make the findings that the project design:
  - a. Provides intensity of development which does not underutilize the property; especially at or near intersections of major streets; and
  - b. Provides pedestrian scale and siting; and
  - c. Incorporates continuity in street facades.

Section 22. That Berkeley Municipal Code Section 23E.68.030.A is amended to read as follows:

**23E.68.030 Uses Permitted**

A. The following table identifies permitted, permissible, and prohibited uses and sets forth the Permit required for each allowed use. Each use and structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a Public Hearing (UP/PH), or is prohibited. Uses within the Downtown Arts District Overlay area (ADO) are also subject to Section 23E.68.040.

| <b>Table 23E.68.030</b>                                                 |                       |                                                       |
|-------------------------------------------------------------------------|-----------------------|-------------------------------------------------------|
| <b>Use and Required Permits</b>                                         |                       |                                                       |
| <b>Use</b>                                                              | <b>Classification</b> | <b>Special Requirements</b>                           |
| <b>Retail Sales</b>                                                     |                       |                                                       |
| All Retail Sales Uses, except those listed below                        | ZC                    | As defined in Sub-title 23F, except otherwise listed  |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops | UP(PH)                | Includes sale for off-site consumption at restaurants |
| Department Stores<br><br>Under 10,000 s.f.                              | AUP<br><br>ZC         |                                                       |
| Firearm/Munitions Businesses                                            | Prohibited            |                                                       |
| Pawn Shops, including Auction Houses                                    | UP(PH)                |                                                       |
| Pet Stores, including Sales and Grooming of Animals (but not Boarding)  | UP(PH)                |                                                       |
| Smoke Shops                                                             | Prohibited            |                                                       |
| <b>Personal and Household Services</b>                                  |                       |                                                       |

| <b>Table 23E.68.030</b>                                                                      |                       |                                                                                                                          |
|----------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                              |                       |                                                                                                                          |
| <b>Use</b>                                                                                   | <b>Classification</b> | <b>Special Requirements</b>                                                                                              |
| All Personal and Household Services, except those listed below                               | ZC                    | As defined in Sub-title 23F, except those otherwise listed (does not include Massage)                                    |
| Laundromats                                                                                  | UP(PH)                |                                                                                                                          |
| Veterinary Clinics                                                                           | UP(PH)                | Including Pet Hospitals                                                                                                  |
| <b>Offices</b>                                                                               |                       |                                                                                                                          |
| Financial Services, Retail (Banks)<br>Under 7,500 s.f.<br>Within the A.D.O.                  | AUP<br>ZC<br>AUP      | Within the Arts District Overlay, see Section 23E.68.040                                                                 |
| Insurance Agents, Title Companies,<br>Real Estate Agents, Travel Agents<br>Within the A.D.O. | ZC<br>AUP             | Subject to additional requirements; see Section 23E.68.060.E<br>Within the Arts District Overlay, see Section 23E.68.040 |
| Medical Practitioners<br>Within the A.D.O.                                                   | ZC<br>AUP             | Including Holistic Health and Mental Health Practitioners<br>Within the Arts District Overlay, see Section 23E.68.040    |
| Non-Chartered Financial Institutions                                                         | Prohibited            |                                                                                                                          |
| Other Professionals and Government, Institutions, Utilities<br>Within the A.D.O.             | ZC<br>AUP             | Subject to additional requirements; see Section 23E.68.060.E<br>Within the Arts District Overlay, see Section 23E.68.040 |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>                   |                       |                                                                                                                          |
| Adult-Oriented Businesses                                                                    | UP(PH)                | Subject to additional requirements; see Section 23E.16.030<br>Prohibited on Public Serving Frontages                     |
| Alcoholic Beverage Service of beer and wine incidental to seated food service                | ZC                    | For on-site consumption only                                                                                             |



| <b>Table 23E.68.030</b>                                                                                        |                             |                                                                                                   |
|----------------------------------------------------------------------------------------------------------------|-----------------------------|---------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                                |                             |                                                                                                   |
| <b>Use</b>                                                                                                     | <b>Classification</b>       | <b>Special Requirements</b>                                                                       |
| Alcoholic Beverage Service, including Bars, Cocktail Lounges, and Taverns                                      | UP(PH)                      | Includes service of distilled spirits incidental to food service.                                 |
| Amusement Device Arcades                                                                                       | UP(PH)                      | Subject to additional requirements; see Section 23E.16.050                                        |
| Commercial Recreation Center<br><br>Under 5,000 s.f.<br><br>Between 5,000--10,000 s.f.<br><br>Over 10,000 s.f. | ZC<br><br>AUP<br><br>UP(PH) | Outdoor use requires UP(PH)                                                                       |
| Dance, Exercise, Martial Arts and Music Studios                                                                | ZC                          |                                                                                                   |
| Entertainment Establishments                                                                                   | UP(PH)                      | Including Nightclubs                                                                              |
| Food Service Establishments:<br><br>Under 3,000 s.f.<br><br>Over 3,000 s.f.<br><br>Within the A.D.O.           | ZC<br><br>AUP<br><br>AUP    | Within the Arts District Overlay, see Section 23E.68.040<br>See Alcoholic Beverage Service above. |
|                                                                                                                |                             |                                                                                                   |
|                                                                                                                |                             |                                                                                                   |
| Group Class Instruction for Business, Vocational or Other Purposes                                             | ZC                          | Subject to additional requirements; see Section 23E.68.060.E                                      |

| <b>Table 23E.68.030</b>                                                             |                       |                                                                 |
|-------------------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                     |                       |                                                                 |
| <b>Use</b>                                                                          | <b>Classification</b> | <b>Special Requirements</b>                                     |
| Gyms and Health Clubs<br><br>Under 7,500 s.f.                                       | AUP<br><br>ZC         | Subject to additional requirements; see<br>Section 23E.68.060.E |
| Hotels, Tourist, including Inns, Bed<br>and Breakfasts and Hostels                  | UP(PH)                |                                                                 |
| Motels, Tourist                                                                     | UP(PH)                |                                                                 |
| Theaters, including Motion Pictures<br>and Stage Performance                        | AUP                   |                                                                 |
| <b>Automobile and Other Vehicle-Oriented Uses</b>                                   |                       |                                                                 |
| Automobile Parts Stores                                                             | Prohibited            |                                                                 |
| Automobile Repair and Service                                                       | Prohibited            |                                                                 |
| Automobile Sales and Rentals, and<br>motorcycle stores                              | UP(PH)                |                                                                 |
| Automobile Washes, Mechanical or<br>Self-Service                                    | Prohibited            |                                                                 |
| Automobile Wrecking Establishments                                                  | Prohibited            |                                                                 |
| Gasoline/Automobile Fuel Stations                                                   | Prohibited            |                                                                 |
| Recreational Vehicle and Trailers<br>Sales and Rental                               | Prohibited            | Including Boats                                                 |
| Tire Sales/Service Stores                                                           | Prohibited            |                                                                 |
| <b>Parking, Outdoor and Exterior Service Window Uses</b>                            |                       |                                                                 |
| Activities or Storage Outside of a<br>building:<br><br>When not abutting R-District | AUP                   |                                                                 |

| <b>Table 23E.68.030</b>                                                                                        |                       |                                                                                                  |
|----------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                                |                       |                                                                                                  |
| <b>Use</b>                                                                                                     | <b>Classification</b> | <b>Special Requirements</b>                                                                      |
| When abutting R-District                                                                                       | UP(PH)                |                                                                                                  |
| Drive-in uses                                                                                                  | Prohibited            |                                                                                                  |
| Surface Parking Lots:<br>Eight (8) or fewer Off-street<br>Parking Spaces                                       | AUP                   |                                                                                                  |
| More than eight (8) Off-street<br>Parking Spaces                                                               | Prohibited            |                                                                                                  |
| Parking Structures                                                                                             | UP(PH)                |                                                                                                  |
| Recycling Redemption Centers                                                                                   | AUP                   |                                                                                                  |
| Outdoor Cafe Seating                                                                                           |                       |                                                                                                  |
| When seating not abutting R-<br>District                                                                       | ZC                    |                                                                                                  |
| When seating abutting R-District                                                                               | AUP                   |                                                                                                  |
| <b>Combination Commercial/Residential Uses</b>                                                                 |                       |                                                                                                  |
| Live/Work Units<br>Not requiring a UP under<br>Chapter 23E.20                                                  | ZC                    |                                                                                                  |
| Requiring a UP under<br>Chapter 23E.20                                                                         | UP(PH)                |                                                                                                  |
| Mixed Use Developments (e.g.<br>Residential/Commercial; Hotel/Other<br>Commercial; Office/Other<br>Commercial) | UP(PH)                | Subject to additional requirements; see<br>Section 23E.68.060.F<br>Subject to Section 23E.68.070 |

| <b>Table 23E.68.030</b>                                                                 |                       |                                                             |
|-----------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                             |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements</b>                                 |
| <b>Uses Incidental to a Permitted Use</b>                                               |                       |                                                             |
| Amusement Devices (up to three)                                                         | AUP                   |                                                             |
| Food or Beverage for Immediate Consumption                                              | ZC                    |                                                             |
| Live Entertainment                                                                      |                       |                                                             |
| Unamplified                                                                             | ZC                    |                                                             |
| Amplified                                                                               | AUP                   |                                                             |
| Manufacturing Uses                                                                      | AUP                   |                                                             |
| Storage of Goods (over 25% of gross floor area)                                         | AUP                   |                                                             |
| Wholesale Activities                                                                    | AUP                   |                                                             |
| <b>Uses Permitted in Residential Districts</b>                                          |                       |                                                             |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                    |                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070 |
| Accessory Uses and Structures                                                           | As per R-5 District   | See Table 23D.44.030                                        |
| Accessory Buildings and Structures with Urban Agriculture                               | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060  |
| Short-Term Rental                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                   |
| Child Care Centers                                                                      | AUP                   |                                                             |

| <b>Table 23E.68.030</b>                                           |                       |                                                     |
|-------------------------------------------------------------------|-----------------------|-----------------------------------------------------|
| <b>Use and Required Permits</b>                                   |                       |                                                     |
| <b>Use</b>                                                        | <b>Classification</b> | <b>Special Requirements</b>                         |
| Clubs, Lodges                                                     | UP(PH)                |                                                     |
| Community Centers                                                 | UP(PH)                |                                                     |
| Dwelling Units, including multifamily developments                | UP(PH)                | Subject to the standards under Section 23E.68.060.F |
| Group Living Accommodations subject to R-3 Standards              | UP(PH)                | Subject to the standards under Section 23E.68.060.F |
| Hospitals                                                         | UP(PH)                |                                                     |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels | UP(PH)                | Subject to Section 23E.68.060.F                     |
| Libraries                                                         | UP(PH)                |                                                     |
| Nursing Homes                                                     | UP(PH)                |                                                     |
| Parks and Playgrounds                                             | ZC                    |                                                     |
| Public Safety and Emergency Services                              | UP(PH)                |                                                     |
| Religious Assembly Uses                                           | UP(PH)                |                                                     |
| Schools, Public or Private                                        | UP(PH)                |                                                     |
| Senior Congregate Housing                                         |                       | Change of use of an existing dwelling unit          |
| Six or fewer people                                               | ZC                    |                                                     |
| Seven or more persons                                             | AUP                   |                                                     |
| New Construction                                                  | UP(PH)                | Subject to Section 23E.68.070                       |
| Miscellaneous Uses                                                |                       |                                                     |

| Table 23E.68.030                                                        |                |                                                                                                                                                                                  |
|-------------------------------------------------------------------------|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                |                |                                                                                                                                                                                  |
| Use                                                                     | Classification | Special Requirements                                                                                                                                                             |
| Automatic Teller Machines When not a Part of a Retail Financial Service |                |                                                                                                                                                                                  |
| Exterior                                                                | UP(PH)         |                                                                                                                                                                                  |
| Interior                                                                | AUP            |                                                                                                                                                                                  |
| Cafeteria, Employee or Residential                                      | UP(PH)         |                                                                                                                                                                                  |
| Cemeteries, Crematories, Mausoleums                                     | Prohibited     |                                                                                                                                                                                  |
| Columbaria                                                              | AUP            | Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building. |
| Circus or Carnival                                                      | UP(PH)         |                                                                                                                                                                                  |
| Dry Cleaning and Laundry Plants                                         | UP(PH)         |                                                                                                                                                                                  |
| Emergency Shelter                                                       |                | See Chapter 23C.10.                                                                                                                                                              |
| Up to 60 beds                                                           | ZC             |                                                                                                                                                                                  |
| More than 60 beds                                                       | UP(PH)         |                                                                                                                                                                                  |
| Kennels or Pet Boarding                                                 | Prohibited     |                                                                                                                                                                                  |
| Laboratories, Testing (including Cannabis Testing)                      | AUP            |                                                                                                                                                                                  |
| Mortuaries                                                              | UP(PH)         |                                                                                                                                                                                  |
| Public Utility Substations, Tanks                                       | UP(PH)         |                                                                                                                                                                                  |
| Radio, Television or Audio/Sound                                        |                |                                                                                                                                                                                  |
| Recording Studios                                                       | AUP            |                                                                                                                                                                                  |

| Table 23E.68.030                                                                                                                                           |                |                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------------------------------------------------------|
| Use and Required Permits                                                                                                                                   |                |                                                                   |
| Use                                                                                                                                                        | Classification | Special Requirements                                              |
| Broadcast Studios                                                                                                                                          | UP(PH)         |                                                                   |
| Warehouses or Storage including<br>Mini-storage Warehouses                                                                                                 | UP(PH)         |                                                                   |
| Wireless Telecommunications<br>Facilities                                                                                                                  | AUP            | Subject to the requirements and findings of<br>Section 23C.17.100 |
| Microcell Facilities, Modifications<br>to Existing Sites, and Additions to<br>Existing Sites When the Site Is<br>Not Adjacent to a Residential<br>District |                |                                                                   |
| All Other Telecommunication<br>Facilities                                                                                                                  | UP(PH)         | Subject to the requirements and findings of<br>Section 23C.17.100 |
| Urban Agriculture                                                                                                                                          |                | 23C.26                                                            |
| Low-Impact Urban Agriculture<br>(LIUA)                                                                                                                     | ZC             |                                                                   |
| High-Impact Urban Agriculture<br>(HIUA)                                                                                                                    | AUP            |                                                                   |
| Legend:                                                                                                                                                    |                |                                                                   |
| ZC -- Zoning Certificate                                                                                                                                   |                |                                                                   |
| AUP -- Administrative Use Permit                                                                                                                           |                |                                                                   |
| UP(PH) -- Use Permit, public hearing<br>required                                                                                                           |                |                                                                   |

**Section 23.** That Berkeley Municipal Code Section 23E.68.040 is amended to read as follows:

**23E.68.040 Downtown Arts District Overlay**

A. The City Council finds and declares that:

1. The purpose of the Downtown Arts District Overlay is to create a core of cultural activities and supportive retail and commercial uses which would generate more pedestrian vitality in the downtown, promote Berkeley's regional leadership in the arts, and encourage broader economic revitalization of the area.
2. To this end, the use and appearance of ground floor spaces in the Downtown Arts District are important to the success of the City's plans for the area, since these spaces define the ambiance and character of the area for pedestrians. The types of uses which would enhance the Arts District include ground floor retail uses which would contribute to the cultural vitality of the area, seated food service, and uses which provide pedestrian scale and siting. Desirable new development would include projects which fully utilize the development potential of the property and incorporate continuity in street facades. Uses such as food uses with seating, art galleries, bookstores and other culturally compatible and pedestrian-oriented uses will contribute to the area's economic vitality.

B. Downtown Arts District Overlay shall be abbreviated as "ADO." Said overlay district shall consist of:

1. All buildings with street frontage on Addison Street between Shattuck Avenue and Milvia Street; and
2. All buildings with street frontage on the two blocks along the southbound west wing of Shattuck Avenue between University Avenue and Center Street, and all addresses on the east side of Milvia Street between University Avenue and Center Street.
3. These proposed boundaries are as set forth in the map on file with the City Clerk and incorporated by reference herein.

C. No Food Service Establishment exclusively providing food for offsite consumption or office use located on the ground floor adjacent to a street frontage may be established within the Downtown Arts District Overlay, either as a new use or as a



change of use, unless an Administrative Use Permit is approved by the Zoning Officer subject to the findings in Section 23E.68.090.C.

Section 24. That Berkeley Municipal Code Section 23E.68.090.C is amended to read as follows:

**23E.68.090 Findings**

C. For each Administrative Use Permit obtained under Section 23E.68.040.C to allow a new Food Service Establishment exclusively providing food for offsite consumption or ground floor office use within the Downtown Arts District Overlay, the Zoning Officer must find that:

1. The project meets the purposes of the Arts Overlay District as set forth in Section 23E.68.040; and
2. The location, size, type, appearance, and signage of the proposed use will:
  - a. Animate and enhance the pedestrian experience on the street; and
  - b. Be generally open to the public evenings and on weekends, whenever practicable

Section 25. That Berkeley Municipal Code Section 23E.98.050 is amended to read as follows:

**Section 23E.98.050 Definitions**

The following definitions are applicable only in the Civic Center District Overlay:

Live Performance Theatre: An establishment that has a permanent stage for the presentation of live performances and entertainment and which contains an audience viewing hall or room with fixed seats.

Museum: A non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches,

communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment.

Public Market: An open air or enclosed marketplace, including a farmer's market, with multiple owner operated and/or independent merchants selling retail food items and handcrafted goods from local and regional producers, so long as 75% or more of retail space is devoted to the sale of General or Specialized food products and no more than 25% of retail space is devoted to one or more of the following Incidental Uses: owner operated and/or independent Food Service Establishment selling food from local and regional producers and sales of Retail Products from local and regional produce.

Section 26. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 11, 2018, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf and Arreguin.

Noes: None.

Absent: None.

ORDINANCE NO. 7,638-N.S

AMENDING BERKELEY MUNICIPAL CODE (BMC) TITLE 23 (ZONING), OFFICIAL ZONING MAP, TO REZONE ASSESSOR PARCEL NUMBERS (APN) 054-1763-001-03 AND 054-1763-010-00 FROM MIXED USE – LIGHT INDUSTRIAL (MU-LI) TO WEST BERKELEY COMMERCIAL (C-W), AND TO AMEND SECTION 23E.64.070 TO ALLOW BUILDINGS ON ASSESSOR PARCEL NUMBERS 054-1763-001-03, 054-1763-010-00 AND 054-1763-003-03 TO BE FIFTY FEET IN HEIGHT AND FOUR STORIES

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

Section 1. The City Council has adopted the Initial Study – Mitigated Negative Declaration that was prepared for this rezoning and has made all required findings pursuant to the California Environmental Quality Act, as amended.

Section 2. The City Council finds this rezoning and text amendment to be consistent with the General Plan and West Berkeley Plan, and to be in the public interest and in furtherance of the public health, safety and general welfare.

Section 3. That the City of Berkeley Zoning Map is hereby amended to rezone the parcels known as Assessor Parcel Numbers 054-1763-001-03 and 054-1763-010-00 to West Berkeley Commercial (C-W), as shown in Exhibit A to this ordinance.

Section 4. That Berkeley Municipal Code Section 23E.64.070.B is hereby amended to read as follows:

23E.64.070 Development Standards

B. The height for a main building shall not exceed the following limits and shall satisfy the following requirements:

| Table 23E.64.070              |              |                  |                                                                  |
|-------------------------------|--------------|------------------|------------------------------------------------------------------|
| Building Height Limitations * |              |                  |                                                                  |
| Use Type                      | Height (ft.) | Stories (number) | Special Requirements/Limitations                                 |
| Commercial Only**             | 40           | 3                |                                                                  |
| Live/Work Only                | 40           | 3                |                                                                  |
| Mixed Use                     | 50           | 4                | The 4th floor must be used for residential or live/work purposes |
| Residential Only              | 40           | 3                |                                                                  |

\*Within designated nodes there is a minimum height requirement, see Section 23E.64.040.D

| Table 23E.64.070                                                                                                                   |              |                  |                                  |
|------------------------------------------------------------------------------------------------------------------------------------|--------------|------------------|----------------------------------|
| Building Height Limitations *                                                                                                      |              |                  |                                  |
| Use Type                                                                                                                           | Height (ft.) | Stories (number) | Special Requirements/Limitations |
| **On Assessor Parcel Numbers 054-1763-001-03, 054-1763-010-00 AND 054-1763-003-03 the maximum height may be 50 feet and 4 stories. |              |                  |                                  |

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 11, 2018, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Kesarwani, Robinson, Wengraf, and Arreguin.

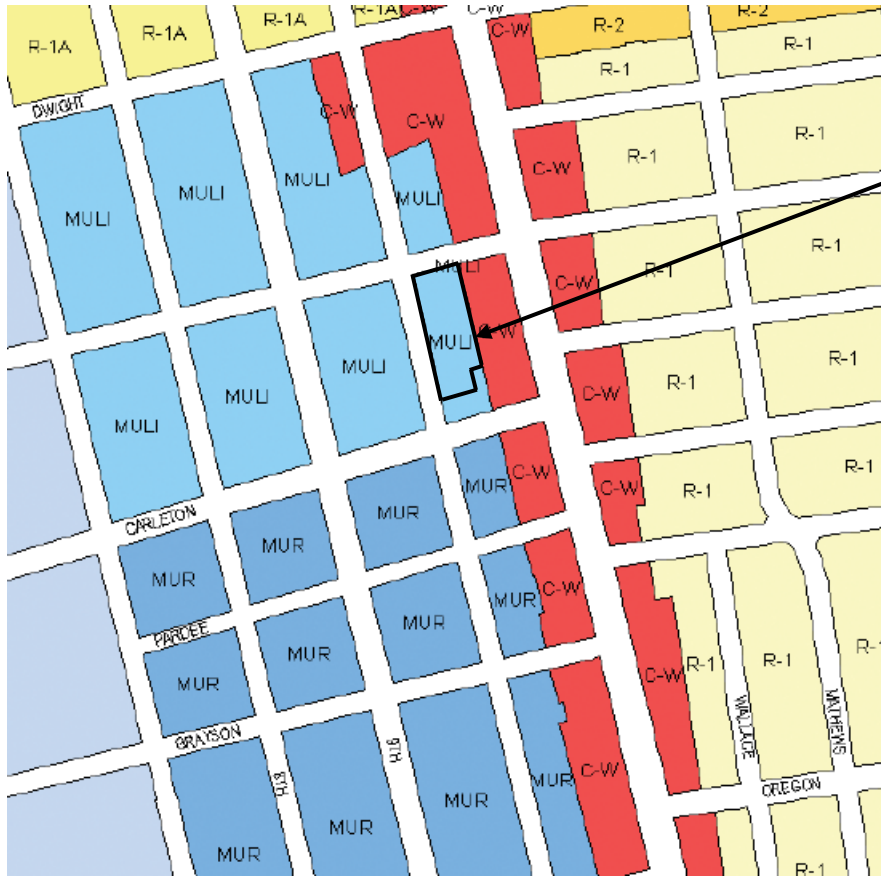
Noes: Davila, Hahn, and Harrison.

Absent: None.

EXHIBIT A

ZONING MAP AMENDMENT

APNs 054-1763-001-03 and 054-1763-010-00



PROPERTY TO BE REZONED FROM MIXED USE – LIGHT INDUSTRIAL TO WEST BERKELEY COMMERCIAL

ZONING DISTRICTS

|      |                                        |
|------|----------------------------------------|
| R-1  | Single Family Residential              |
| R-1A | Limited Two-family Residential         |
| R-2  | Restricted Two-family Residential      |
| R-2A | Restricted Multiple-family Residential |
| R-3  | Multiple-family Residential            |
| R-4  | Multi-family Residential               |
| R-5  | High Density Residential               |
| ES-R | Environmental Safety-Residential       |
| C-1  | General Commercial                     |
| C-2  | Central Commercial                     |
| C-E  | Elmwood Commercial                     |
| C-N  | Neighborhood Commercial                |
| C-NS | North Shattuck Commercial              |
| C-SA | South Area Commercial                  |
| C-SO | Solano Avenue Commercial               |
| C-T  | Telegraph Avenue Commercial            |
| C-W  | West Berkeley Commercial               |
| M    | Manufacturing                          |
| MM   | Mixed Manufacturing                    |
| MULI | Mixed Use-Light Industrial             |
| MUR  | Mixed Use-Residential                  |
| SP   | Specific Plan                          |
| U    | Unclassified                           |





Office of the City Manager

CONSENT CALENDAR  
January 22, 2019

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

RECOMMENDATION

Approve the minutes for the Council meetings of November 26, 2018 (special closed), November 27, 2018 (regular), December 4, 2018 (regular), December 6, 2018 (special), and December 11, 2018 (regular).

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. November 26, 2018–Special Closed City Council Meeting
2. November 27, 2018–Regular City Council Meeting
3. December 4, 2018–Regular City Council Meeting
4. December 6, 2018–Special City Council Meeting
5. December 11, 2018–Regular City Council Meeting

**MINUTES  
BERKELEY CITY COUNCIL SPECIAL MEETING  
MONDAY, NOVEMBER 26, 2018  
4:00 P.M.**

**Redwood Room – 2180 Milvia Street, 6<sup>th</sup> Floor, Berkeley, CA**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 4:07 p.m.

**Present:** Droste, Hahn, Harrison, Maio, Worthington, Arreguin

**Absent:** Bartlett, Davila, Wengraf

**Public Comment - Limited to items on this agenda only – 1 speaker**

**CLOSED SESSION:**

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

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

**Negotiators:** Dee Williams-Ridley, City Manager, Paul Buddenhagen, Interim Deputy City Manager, LaTanya Bellow, Director of Human Resources.

**Employee Organizations:** Public Employees’ Union, Local 1.

**Action:** No reportable action.

Councilmember Davila present at 4:14 p.m.

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

a. Rudie v. City of Berkeley, ACSC Case No. RG17870389.

**Action:** No reportable action.

b. Robertson v. John Fitzgerald Smith, City of Berkley, et al., ACSC Case No. RG17851346.

**Action:** No reportable action.



- c. Dalton v. City of Berkeley, US District Court, Northern District of California, Case No. 17-cv-07178 JCS.

**Action:** M/S/C (Worthington/Hahn) to authorize the City Attorney to enter into a settlement agreement consistent with the terms outlined in the proposed settlement agreement for an amount not to exceed \$40,000.

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

- d. Ryder Vanderheyden v. Subadra Jayram; Thathachar Jayram; City of Berkeley; State of California, ACSC Case No. RG16 841708

**Action:** M/S/C (Harrison/Maio) to authorize the City Attorney to settle the case for \$27,500, contingent on the court granting the City's motion that the settlement is in good faith. This motion is necessary because although this will settle the case between the City and Plaintiff, there are other defendants who will remain in the case.

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

## OPEN SESSION:

City Council met in Closed Session and gave direction as follows:

- a. Dalton v. City of Berkeley, US District Court, Northern District of California, Case No. 17-cv-07178 JCS: Authorized the City Attorney to enter into a settlement agreement consistent with the terms outlined in the proposed settlement agreement for an amount not to exceed \$40,000.
- b. Ryder Vanderheyden v. Subadra Jayram; Thathachar Jayram; City of Berkeley; State of California, ACSC Case No. RG16 841708: Authorized the City Attorney to settle the case for \$27,500, contingent on the court granting the City's motion that the settlement is in good faith. This motion is necessary because although this will settle the case between the City and Plaintiff, there are other defendants who will remain in the case.

## Adjournment

**Action:** M/S/C (Maio/Worthington) to adjourn the meeting.

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

Adjourned at 4:50 p.m.

This is to certify that the foregoing is a true and correct record of the special closed meeting of November 26, 2018 as approved by the Berkeley City Council.

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April Richardson, Assistant City Clerk

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, November 27, 2018**  
**6:00 PM**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 6:09 p.m.

**Present:** Maio, Davila, Hahn, Wengraf, Worthington, Droste, Arreguin

**Absent:** Bartlett, Harrison

Councilmember Harrison present at 6:58 p.m.

**Report from Closed Session:**

1. Dalton v. City of Berkeley: The Council met in closed session and authorized the City Attorney to enter into a settlement agreement consistent with the terms outlined in the proposed settlement agreement for an amount not to exceed \$40,000.
2. Vanderheyden v. City of Berkeley: The Council met in closed session and authorized the City Attorney to settle the case for \$27,500, contingent on the court granting the City's motion that the settlement is in good faith. His motion is necessary because although this will settle the case between the City and Plaintiff, there are other defendants who will remain in the case.

**City Auditor Comments:**

The City Auditor recognized the efforts of the Council to fund the reserve funds and the City's unfunded liabilities in the excess equity proposal. Also, the City Auditor expressed her support for the policy committee proposal to improve the legislative process and staff capacity concerns highlighted in previous audits.

**City Manager Comments:**

1. Open House for the Pedestrian Master Plan, Dec. 1 at the Frances Albrier Recreation Center
2. Listening Session for the new Transfer Station, Nov. 28 at South Berkeley Senior Center and Dec. 1 at the Live Oak Recreation Center
3. Hearst Avenue Repaving Project Meeting, December 3 at North Berkeley Senior Center

**Public Comment on Non-Agenda Matters:** 8 speakers.

## Consent Calendar

### Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 19 speakers.

**Action:** M/S/C (Arreguin/Worthington) to accept revised materials from Councilmember Davila on Item 23.

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

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

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

- 1. Safe Storage of Firearms; Adding Berkeley Municipal Code Chapter 13.69**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance adding Berkeley Municipal Code Chapter 13.69 regarding safe storage of firearms.  
**Financial Implications:** Minimal  
Contact: Farimah Brown, City Attorney, 981-6950  
**Action:** Adopted first reading of Ordinance No. 7,633–N.S. Second reading scheduled for December 4, 2018.
- 2. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of October 2, 2018 (regular), October 9, 2018 (special), October 15, 2018 (special closed), October 16, 2018 (special and regular), October 22, 2018 (special closed), and October 30, 2018 (special closed and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, 981-6900  
**Action:** Approved minutes as submitted.
- 3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on November 27, 2018**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager’s threshold will be returned to Council for final approval.  
**Financial Implications:** Various Funds - \$4,113,150  
Contact: Henry Oyekanmi, Finance, 981-7300  
**Action:** Approved recommendation.

## Consent Calendar

**4. Revenue Grant Application: Funding Support to Conduct HIV Prevention Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to submit a grant application to the California Department of Public Health, Office of AIDS, and if awarded, accept the grant, execute any resulting agreements and amendments, and implement the projects and appropriation of funding for related expenses to conduct HIV prevention, protection, and health promotion services for the California Department of Public Health, Office of AIDS. Revenue is projected for the amount of \$25,000 for period July 1, 2018 to June 30, 2019.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 68,667–N.S.

**5. Authorizing Acceptance of Mental Health Oversight and Accountability Commission Mental Health Triage Grant**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a grant agreement with the Mental Health Oversight and Accountability Commission (MHOAC) and any amendments in the amount of \$614,834 and authorize the use of Medi-Cal matching funds of \$180,184 to create and staff a mental health crisis triage phone line for the period December 1, 2018 through November 30, 2021.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 68,668–N.S.

**6. Contract: Youth Spirit Artworks for Transition Age Youth (TAY) Case Management and Linkage Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a contract and any amendments up to Not To Exceed (NTE) \$100,000 through June 30, 2019 with vendor Youth Spirit Artworks for Transition Age Youth Case Management and Linkage Services, and authorizing the City Manager to provide an advance payment in the amount of \$10,000 (10% of the total contract NTE amount) to cover expenses associated with project initiation.

**Financial Implications:** Mental Health Service Act Fund - \$100,000

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

**Action:** Adopted Resolution No. 68,669–N.S.

## Consent Calendar

- 7. Memorandum of Understanding: International Brotherhood of Electrical Workers Local 1245 – A.F.L. – C.I.O.**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions: 1) approving a new twenty (20) month Memorandum Agreement (hereafter referred to as “MOU”) with the International Brotherhood of Electrical Workers Local 1245 (hereafter referred to as the “Union”) with a term of October 21, 2018 through June 27, 2020 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new MOU; and 2) approving a new salary resolution for Representation Unit C that implement the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 68,348-N.S. Also, authorize the City Manager to make non substantive edits to the format and language of the Memorandum Agreement in alignment with Council Direction, the tentative agreement and conforming to legal requirements.  
**Financial Implications:** See report  
Contact: LaTanya Bellow, Human Resources, 981-6800  
**Action:** Adopted Resolution No. 68,670–N.S. (MOU); and Resolution No. 68,671–N.S. (Salary).
- 8. Dell Computers, Inc.: Using National Association of State Procurement Officials (NASPO) ValuePoint Cooperative Purchasing Agreement for Computer Hardware and Software Purchases**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to increase spending authority with Dell Computers, Inc. for the purchase of computer and server hardware, software, and related services, utilizing pricing and contracts, amendments, and extensions from the National Association of State Procurement Officials (NASPO) ValuePoint for the period beginning November 28, 2018 through June 30, 2020 for an amount not-to-exceed (NTE) \$1,235,400, with \$667,700 in Fiscal Year 2019 and \$567,700 in Fiscal Year 2020.  
**Financial Implications:** See report  
Contact: Savita Chaudhary, Information Technology, 981-6500  
**Action:** Adopted Resolution No. 68,672–N.S.
- 9. Contract No. 10976 Amendment: Bay Construction Company for Strawberry Creek Park (South) Sport Court Renovations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10976 with Bay Construction Company for the Strawberry Creek Park (South) Sport Court Renovations project, increasing the amount by \$45,000 for an amended total amount not to exceed \$591,000.  
**Financial Implications:** Parks Tax Fund - \$45,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700  
**Action:** Adopted Resolution No. 68,673–N.S.

## Consent Calendar

- 10. Contract No. 10217 Amendment: TranSystems, Inc. for Construction Support Services for the South Cove Accessible Ramp Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 10217 with TranSystems, Inc. adding \$23,241 for construction support services for the South Cove Accessible Ramp Project for a total contract amount not to exceed \$216,512.  
**Financial Implications:** Marina Fund - \$23,241  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700  
**Action:** Adopted Resolution No. 68,674–N.S.
- 11. Contract: Opticos Design, Inc. for Density Standards Study**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Opticos Design, Inc. to prepare a Density Standards Study for an amount not to exceed \$75,000 for the period of December 1, 2018 through December 1, 2019.  
**Financial Implications:** Land Use Planning Fund - \$75,000  
Contact: Timothy Burroughs, Planning and Development, 981-7400  
**Action:** Adopted Resolution No. 68,675–N.S.
- 12. Grant Application: CalRecycle for Illegal Disposal Site Abatement Grant Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit an application to the Department of Resources Recycling and Recovery (CalRecycle) for the Illegal Disposal Site Abatement Grant Program; to accept funds and execute all necessary applications, payment requests, agreements and any amendments; and to appropriate funding for related expenditures, subject to securing the program funds.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,676–N.S.

## Consent Calendar

13. **Contracts: On-Call Construction and Project Management Services: KPM Consulting LLC, O'Connor Construction Management, Inc., and Townsend Management, Inc.**  
**From: City Manager**  
**Recommendation:** Adopt three Resolutions authorizing the City Manager to execute contracts and any amendments with the following firms for on-call construction and project management services for capital improvement projects, each for a period of January 1, 2019 through June 30, 2021:  
1. KPM Consulting LLC (KPM), for an amount not to exceed \$680,000.  
2. O'Connor Construction Management, Inc. (O'Connor), for an amount not to exceed \$660,000.  
3. Townsend Management Inc. (Townsend), for an amount not to exceed \$660,000.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,677–N.S. (KPM); Resolution No. 68,678–N.S. (O'Connor); and Resolution No. 68,679–N.S. (Townsend).
14. **Contract No. 9735 Amendment for R&S Erection of Richmond, Inc. for Rolling Gate and Roll-Up Door Service and Repairs**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9735 with R&S Erection of Richmond, Inc. increasing the current contract by \$150,000 for a total not to exceed amount of \$300,000.  
**Financial Implications:** Building Maintenance Fund - \$150,000  
Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,680–N.S.
15. **Contract: Community Conservation Centers, Inc. for Sorting and Marketing Services of Curbside Collected Recyclables**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a contract with Community Conservation Centers, Inc. for recyclables processing from December 1, 2018 through June 30, 2020 for a total amount not to exceed \$4,000,000.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,681–N.S.

## Consent Calendar

- 16. Contract: Andes Construction, Inc. for Sanitary Sewer Rehabilitation and Replacement at Various Locations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Clay Street, San Pablo Avenue, Garfield Avenue, Kains Avenue, Portland Avenue, Santa Fe Avenue, Thousand Oaks Boulevard, Curtis Street and Backline, Visalia Avenue, Arlington Backline, San Luis Road, Second Street, Hearst Avenue, and University Avenue; accepting the bid of the lowest responsive and responsible bidder, Andes Construction, Inc. (Andes); and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$6,374,743.  
**Financial Implications:** Sanitary Sewer Fund - \$6,374,743  
Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,682–N.S.
- 17. North Berkeley BART Site Recommendations**  
**From: Housing Advisory Commission**  
**Recommendation:** Adopt guidelines for the development of the North Berkeley BART site to develop as many housing units as possible and include as many affordable units as financially feasible, with an emphasis on addressing the City's underserved Regional Housing Need Allocation (RHNA) targets.  
**Financial Implications:** See report  
Contact: Amy Davidson, Commission Secretary, 981-5400  
**Action:** Item held over to the January 15, 2019 worksession meeting.

## Council Consent Items

- 18. Appoint Darryl Moore to the Berkeley Housing Authority Board**  
**From: Mayor Arreguin**  
**Recommendation:** Adopt a Resolution appointing Darryl Moore to serve a four-year term on the Berkeley Housing Authority Board of Commissioners.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Adopted Resolution No. 68,683–N.S.



## Council Consent Items

**19. Options Recovery Services: Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds**

**From: Councilmembers Maio and Davila**

**Recommendation:** Adopt a resolution approving the expenditure of an amount not to exceed \$500 per council member, including \$500 from Councilmember Maio, to the Options Recovery Services with funds relinquished to the city's general fund for this purpose from the discretionary council office budget of Councilmember Maio and any other council members who would like to contribute.

**Financial Implications:** Councilmembers' Discretionary Funds - \$500

Contact: Linda Maio, Councilmember, District 1, 981-7110

**Action:** Adopted Resolution No. 68,684–N.S. revised to include contributions from the following councilmembers up to the amounts listed: Councilmember Hahn - \$200; Councilmember Wengraf - \$250; Councilmember Davila - \$100; Councilmember Maio - \$250.

**20. Encouraging Long-Term Tenant Stability**

**From: Councilmembers Maio, Droste, Harrison, and Hahn**

**Recommendation:** Refer to the City Manager to amend BMC 21.28.080 as pertains to the Affordable Housing Mitigation fee as follows: If a property contains three or more units, the affordable housing mitigation fee for a unit that is occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date of sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent, but only if the owner owned and resided in the unit as of June 30, 2010 or has resided as a tenant and has achieved ownership during the previous 5 years.

**Financial Implications:** None

Contact: Linda Maio, Councilmember, District 1, 981-7110

**Action:** Approved recommendation as revised in Supplemental Reports Packet #2 and written below:

*Facilitate the ability of long-term tenants to purchase their residence by referring to the City Manager to amend BMC 21.28.080 as it pertains to the Affordable Housing Mitigation fee as follows: If the property contains 4 units or fewer, the affordable housing mitigation fee for a unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date of conversion or sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent.*

## Council Consent Items

- 21. Resolution and letter of request to PG&E to offer rebates and other incentives for residential customers to encourage a transition from gas to electrical appliances and heating systems, as well as, subsidies for electrical upgrades required**  
**From: Councilmembers Davila and Harrison**  
**Recommendation:** Approve a resolution to send the attached letter to PG&E requesting that they offer rebates and other incentives for residential customers to encourage a transition from gas to electrical appliances and heating systems as well as subsidies for electrical upgrades required.  
**Financial Implications:** None  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Adopted Resolution No. 68,685–N.S.
- 22. Budget Referral: Gun Buyback and Art of Peace Program**  
**From: Councilmembers Davila**  
**Recommendation:** AAO Budget Referral to the FY19 (2018/2019) November 2018 AAO Budget Process to set aside \$60,000 to frontload funds to bring the Robby Poblete Foundation Gun Buyback, Art of Peace and Work in Progress programs to Berkeley.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Approved recommendation.
- 23. Request from Bay Area Migrant Welcome Committee for City of Berkeley welcome and contributions to accompany these migrant asylum seekers to the US and specifically to the Bay Area**  
**From: Councilmembers Davila**  
**Recommendation:** Approve a resolution to approve the expenditure of an amount not to exceed \$150 per Councilmember, including \$150 from Councilmember Cheryl Davila, to the Bay Area Migrant Welcome Committee for funds to be delivered directly to those traveling as part of the caravan with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila and any other Councilmembers who would like to contribute. The funds will support with food, shelter and basic necessities they are detained at ports of entry and those permitted travel to cities for immigration hearings, including the Bay Area.  
**Financial Implications:** Councilmember's Discretionary Budget - \$150  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Adopted Resolution No. 68,686–N.S. as amended in the revised material distributed at the meeting and further amended to include the Interfaith Movement for Human Integrity as the fiscal agent for the relinquishments and revised to include contributions from the following councilmembers up to the amounts listed: Councilmember Wengraf - \$150; Mayor Arreguin - \$250; Councilmember Harrison - \$150; Councilmember Droste - \$150; Councilmember Maio - \$150.

## Council Consent Items

- 24. Short-Term Referral to City Manager and Office of Energy and Sustainable Development to Draft Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits**  
**From: Councilmembers Harrison and Davila**  
**Recommendation:** Short-term referral to the City Manager and the Office of Energy and Sustainable Development to draft an ordinance amending Berkeley Municipal Code (BMC) Chapter 7.52, reducing tax imposed for qualifying electrification, energy efficiency, and water conservation retrofits.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, 981-7140  
**Action:** Councilmember Hahn added as a co-sponsor. Approved recommendation as revised in Supplemental Communications Packet #2.
- 25. Comprehensive Investment Policy based on ESG Principles**  
**From: Councilmembers Wengraf, Worthington, Droste, and Mayor Arreguin**  
**Recommendation:** Refer to the City Manager to consider the integration of ESG (environmental, social and governance) principles into the current City of Berkeley Investment Policy framework and return to Council with a recommendation.  
**Financial Implications:** Staff time  
Contact: Susan Wengraf, Councilmember, District 6, 981-7160  
**Action:** Approved recommendation.
- 26. Short Term Referral to Expedite Components of the More Student Housing Now Resolution, and budget referral to the annual appropriation ordinance adoption**  
**From: Councilmember Worthington**  
**Recommendation:** Short term referral to the City Manager and the Planning Department to promptly move forward with components of the More Student Housing Now Resolution that do not require additional CEQA review, amend existing City ordinances and policies that prevent the implementation of SB 1227, and provide a budget referral to the annual appropriation ordinance adoption that would allocate the necessary resources as determined by the Planning Staff.  
**Financial Implications:** See report  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Approved recommendation as revised in Supplemental Reports Packet #2.

## Council Consent Items

27. **Pledge to Actively Support Diversity Recruitment for the City's Boards and Commissions**  
**From: Councilmembers Worthington and Davila**  
**Recommendation:** That the Council pledges to actively support diversity recruitment by creating their own plan-of-action to increase diversity in the City's Boards and Commissions. This pledge aims to transform the Boards and Commissions to achieve full representation of Asian, Latino, Black, and indigenous individuals relative to the Berkeley population.  
**Financial Implications:** Minimal  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Councilmember Droste added as a co-sponsor. Approved recommendation.
28. **Refer the City Manager to Improve the Current Tree Ordinance and Seek Funding Opportunities to Plant More Trees in the City**  
**From: Councilmembers Worthington, Harrison, and Davila**  
**Recommendation:** That the Council refer the City Manager to improve the current tree ordinance to protect more trees, develop policy on street tree/hardscape conflicts, encourage more community initiative and participation in the maintenance and care of our street trees and seek potential funding opportunities to plant more trees in Berkeley.  
**Financial Implications:** Minimal  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Approved recommendation revised to add "and funds to maintain new and existing trees on public property."
29. **Write a letter to the Alameda County Registrar Allowing voters to rank above three ranked choice ratings**  
**From: Councilmember Worthington**  
**Recommendation:** That the City Council write a letter to the Alameda County Registrar of Voters indicating that Berkeley is interested in allowing voters to rank above three ranked choice ratings.  
**Financial Implications:** Minimal  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Approved recommendation.
30. **Refer the Transportation Commission to consider incentives for the public to use sustainable modes of transportation similar to Bologna, Italy**  
**From: Councilmember Worthington**  
**Recommendation:** That the Council refer to the Transportation Commission to create incentives for members of the public to cycle, walk and take public transport as opposed to driving.  
**Financial Implications:** Minimal  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Councilmembers Hahn and Harrison added as co-sponsors. Approved recommendation as revised in Supplemental Reports Packet #2.

## Council Consent Items

- 31. City Manager short-term Referral; Preliminary steps towards the expansion of the GoBerkeley Transportation Program to Increase Parking Efficiency**  
**From: Councilmembers Worthington and Harrison**  
**Recommendation:** City Manager short-term Referral; Amendment to the City of Berkeley municipal code regulating off-street parking lots in order to facilitate the expansion of the GoBerkeley Transportation Program to allow private parking vendors to charge adjustable rates for parking spaces.  
**Financial Implications:** See report  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Approved recommendation.
- 32. Refer to the City Manager to consider boycotting Amazon for its role in tracking immigrants in cooperation with ICE**  
**From: Councilmembers Worthington and Davila**  
**Recommendation:** Refer to the City Manager to consider the City of Berkeley boycotting Amazon and refrain from using its services to purchase goods for city use.  
**Financial Implications:** Minimal  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Item held over to January 22, 2019 to be calendared with similar items regarding weapons contracts and sanctuary contracting policies – including revised material in Supplemental Reports Packet #2.
- 33. Referral to the Transportation Commission: Explore Possibilities for Initiating Equitable Exchange with Transportation Network Companies (TNCs)**  
**From: Councilmember Worthington, Mayor Arreguin, and Councilmember Hahn**  
**Recommendation:** The City Council requests that the Transportation Commission initiate research into an effective means of equitable exchange with TNCs. In order to compensate the City of Berkeley for traffic congestion, air pollution, and infrastructure damage, the Council recommends that TNCs participate in the payment of taxes and the exchange of data.  
**Financial Implications:** See report  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Councilmember Davila added as a co-sponsor. Approved recommendation revised to add the proposed ballot measure item in Supplemental Reports Packet #2.

## Council Consent Items

- 34. Refer to the City Manager to add a condition to Zoning Board Approved permits to bring attention to the Pay Transparency policy to project applicants, and consider these Pay Transparency Ordinance amendments**  
**From: Councilmember Worthington and Mayor Arreguin**  
**Recommendation:** That the Council refer to the City Manager to add a condition to Zoning Board Approved permits in order to bring attention to the Pay Transparency policy to project applicants, and consideration of amendments to the Pay Transparency Ordinance.  
**Financial Implications:** Minimal  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Approved recommendation.
- 35. Referral for City Manager to Take a Fresh Look at Repurposing the Old City Hall Building**  
**From: Councilmembers Worthington and Davila**  
**Recommendation:** Short-term referral to the City Manager to consider further utilizing the currently mostly unused Old City Hall for nonprofits including Berkeley Community Media for classes, and potentially a temporary emergency winter shelter.  
**Financial Implications:** See report  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Moved to Action Calendar. 23 speakers. M/S/C (Harrison/Worthington) to authorize the City Manager to utilize Old City Hall as an Inclement Weather Winter Shelter for the 2018-2019 winter season.  
**Vote:** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.

Recess 8:26 p.m. – 8:42 p.m.

## Council Consent Items

**36. Support League of California Cities' Efforts to "Stop Wandering Weed"**

**From: Councilmember Worthington**

**Recommendation:** That the Council supports the League of California Cities' efforts to urge the Bureau of Cannabis Control to "Stop Wandering Weed" and amend proposed regulations that are negligent to consumer public safety and health protections. The Council should also send a letter requesting our State Assemblymember and State Senator to introduce or support legislation that allows local control on cannabis delivery.

**Financial Implications:** Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

**Action:** Approved recommendation as revised in Supplemental Reports Packet #2 as written below:

*That the Council should support proposed regulations that protect both consumer public safety and voter-approved access to legal cannabis. That can be achieved via a letter to our state lawmakers, supporting legislation that maintains the Bureau of Cannabis Control's proposed regulation authorizing delivery into any jurisdiction within the state of California. The council should also simultaneously support safeguards on how cannabis deliveries are permitted. It is important that localities maintain their authority to restrict commercial cannabis activity from establishing a physical operation within their boundaries. However, the council should also support the right of all Californians of legal age to have safe access to, and receive delivery of, legal consumer products regardless of where they live.*

**37. That the Council approve a letter of support to stop the deportation of the Benavides-Pineda family**

**From: Councilmembers Worthington and Davila**

**Recommendation:** That the Council approve a letter of support to stop the deportation of the Benavides-Pineda family, who are an integral part of the Berkeley community.

**Financial Implications:** Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

**Action:** Approved recommendation.

## Action Calendar – Public Hearings

38. **ZAB Appeal: 3000 Shattuck Avenue, Use Permit #ZP2015-0229** (Continued from November 13, 2018.)

**From: City Manager**

**Recommendation:** Continue the public hearing and, upon conclusion, uphold the appeal and adopt a Resolution approving the project based on the Findings and Conditions presented by staff to the Zoning Adjustments Board (ZAB) on June 28, 2018, for Use Permit #ZP2015-0229, to demolish a gas station structure and construct a five-story, 40,557 square foot mixed-use building with ground-floor retail uses and 23 dwelling units.

**Financial Implications:** None

Contact: Timothy Burroughs, Planning and Development, 981-7400

**Public Testimony:** The Mayor asked for testimony from the public. 9 speakers. M/S/C (Droste/Davila) to close the public hearing.

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

Councilmember Worthington absent 9:31 p.m. – 9:52 p.m.

**Action:** M/S/C (Droste/Maio) to adopt Resolution No. 68,687–N.S. to uphold the appeal and adopt a Resolution approving the project based on the Findings and Conditions presented by staff to the Zoning Adjustments Board (ZAB) on June 28, 2018, for Use Permit #ZP2015-0229, to demolish a gas station structure and construct a five-story, 40,557 square foot mixed-use building with ground-floor retail uses and 23 dwelling units amended to include two additional conditions written below.

- Include the revised site plan submitted by the applicant that includes a loading zone.
- The project shall comply with the City of Berkeley wage theft ordinance and ensure that those that work on the are notified of their rights under state wage theft prevention law.

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



## Action Calendar – Public Hearings

### 39. Renewal of the Elmwood Avenue BID for Calendar Year 2019

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution confirming the Annual Report and Budget for the Elmwood Business Improvement District (hereafter, “the District”, “the Elmwood BID” or “the BID”) for 2018-19 and, if no majority protest exists, levy annual assessments in the District for calendar year 2019 to finance services and improvements and authorize a fiscal agency contract with Elmwood Business Association for receipt and expenditure of District funds.

**Financial Implications:** See report

Contact: Jordan Klein, Economic Development, 981-7530

**Public Testimony:** The Mayor opened the public hearing. 1 speaker.

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

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

**Action:** M/S/C (Worthington/Droste) to adopt Resolution No. 68,688–N.S.

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

### 40. Renewal of the Solano Avenue BID for Calendar Year 2019

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution confirming the Annual Report and Budget for the Solano Avenue Business Improvement District (hereafter, “Solano BID Advisory Board” or “the BID”) for 2018-19 and, if no majority protest exists, levy annual assessments in the District for calendar year 2019 to finance services and improvements and authorize a fiscal agency contract for receipt and expenditure of District funds.

**Financial Implications:** See report

Contact: Jordan Klein, Economic Development, 981-7530

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

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

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

**Action:** M/S/C (Hahn/Maio) to adopt Resolution No. 68,689–N.S.

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

## Action Calendar – Public Hearings

### 41. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses

**From: City Manager**

**Recommendation:** Conduct a public hearing and adopt the first reading of an Ordinance amending the Berkeley Municipal Code to streamline and clarify the permitting process for small businesses in commercial districts by:

1. Reducing the amount of parking required for businesses moving into existing commercial spaces;
2. Simplifying food service categories by reducing them from three to one;
3. Reducing permitting time and costs for small businesses that request a change of use in existing commercial spaces;
4. Clarifying the permit process for new business types that may not be specifically defined in the City's zoning rules;
5. Making 'commercial recreation' uses (such as bowling alleys, miniature golf courses or ping pong clubs) easier to permit in commercial districts; and
6. Streamlining the permit process and providing clear performance standards for restaurants that wish to serve beer and wine.

The ordinance would amend Berkeley Municipal Code Chapters 23E.16, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, and 23E.98.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Jordan Klein, Economic Development, 981-7530

**Action:** M/S/C (Arreguin/Maio) to continue the public hearing on Item 41 to a date certain of December 4, 2018.

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

Councilmember Hahn 8:42 p.m. – 8:50 p.m.

Councilmember Davila 8:42 p.m. – 8:51 p.m.

Councilmember Harrison 8:42 p.m. – 8:52 p.m.

## Action Calendar – Old Business

- 42. Proposed Amendment to Berkeley’s Minimum Wage Ordinance: Berkeley Municipal Code Chapter 13.99** *(Continued from November 13, 2018. Item contains revised material.)*  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.99, revising Section 13.99.040 to reinstate the exemption for youth job training programs, freezing the rate at the current rate of \$13.25 and allowing the programs to adhere to the state of California Minimum Wage schedule thereafter.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, 981-5400  
**Action:** M/S/C (Arreguin/Hahn) to take no action on Item 42.  
**Vote:** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.
- 43. Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program** *(Continued from November 13, 2018.)*  
**From: Councilmembers Bartlett, Worthington, and Davila**  
**Recommendation:** That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.  
**Financial Implications:** Minimal  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130  
**Action:** Item held over to December 4, 2018.

## Action Calendar – New Business

### 44. FY 2018 Year-End Results and FY 2019 First Quarter Budget Update

#### From: City Manager

**Recommendation:** Discuss and determine funding allocations based on the FY 2018 General Fund Excess Equity for: 1. the General Fund Reserves and 2. the Mayor's June 26, 2018, Supplemental Budget Recommendations and the Council's Budget Referrals that were deferred to November 2018.

**Financial Implications:** See report

Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

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

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

**Action:** 7 speakers. M/S/C (Worthington/Maio) to adopt the City Manager's recommendation with the Mayor's revision contained in Supplemental Reports Packet #1)

Approve the following allocations of FY 2018 General Fund Excess Equity:

1. Pursuant to the adopted General Fund Reserve Policy, allocate \$10,180,000 to the General Fund Reserves as follows (\$5.60 Million to the Stability Reserve Fund and \$4.58 Million to the Catastrophic Reserve Fund);
2. Allocate \$1,500,000 to be reserved for Negotiated COLAs in Bargaining Unit Memoranda Agreements;
3. Allocate \$4,000,000 to the CALPERS Section 115 Supplemental Trust to address Unfunded Liabilities;
4. Allocate the remaining \$5.67 Million in Unassigned Excess Equity as follows (and reflected in Attachment 1):
  - \$200,000 for a Temporary Staff Position to support the Undergrounding Project
  - \$100,000 for Secure Storage at an additional location
  - \$1,500,000 to fully fund the Enterprise Resource Software Project
  - \$117,737.50 (half from GF, remainder from Permit Fund) for a 2-year Senior Planner for the LRDP project and other Land Use Planning work
  - \$400,000 for Traffic Calming at the California and Dwight Intersection (Dist 3 and 4)
  - \$100,000 for a Pedestrian Activated Crosswalk at Cedar/Rose Park (District 1)
  - \$100,000 for a Pedestrian Activated Crosswalk at Grant and University (Dist 4 and 1)
  - \$50,000 for a Rectangular Rapid Flashing Beacons (RRFB) at Eton and Claremont (Partially Funded, District 8)
  - \$50,000 for a RRFB at Claremont and Russell (Partially Funded, District 8)
  - \$200,000 for the Hopkins Corridor Study (District 5)
  - \$575,000 set aside for implementation of Fire Safety, Education, Prevention and Disaster Preparedness Recommendations
  - \$50,000 for RFP to address gaps for marginalized youth in Berkeley
  - \$25,000 to extend the hours that the Frances Albrier Community Center is open
  - \$86,924 to pay full city Minimum Wage to YouthWorks employees for FY 2019

## Action Calendar – New Business

- \$250,000 to fully fund Environmental Impact Report for Southside area land use changes (implementing the More Student Housing Now Resolution).
- \$1,820,338.50 to repay the Workers Compensation Fund for payment of part of the outstanding principal for the purchase of the 1001, 1007, 1011 University and 1925 Ninth Street properties
- \$25,000 for project manager for major planning initiatives: Pacific Steel Casting and North Berkeley BART
- \$20,000 for Age Friendly Berkeley Study

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

### 45. **Amendment: FY 2019 Annual Appropriations Ordinance**

**From:** City Manager

**Recommendation:** Adopt first reading of an Ordinance amending the FY 2019 Annual Appropriations Ordinance No. 7,617–N.S. for fiscal year 2019 based upon recommended re-appropriation of committed FY 2018 funding and other adjustments authorized since July 1, 2018, in the amount of \$124,106,105 (gross) and \$112,090,748 (net).

**Financial Implications:** See report

Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

**Action:** 0 speakers. M/S/C (Maio/Wengraf) to adopt first reading of Ordinance No. 7,634–N.S. with amended amounts of \$152,385,440 (gross) and \$105,727,086 (net). Second reading scheduled for December 4, 2018.

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

## Action Calendar – New Business

### 46. Structure for City Council Standing Policy Committees

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the framework and procedures for standing policy committees of the City Council as part of the City's legislative process.

**Financial Implications:** See report

Contact: Dee Williams-Ridley, City Manager, 981-7000

**Action:** M/S/C (Arreguin/Worthington) to accept revised materials from the City Manager on Item 46.

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

Councilmember Worthington absent 11:10 p.m. – 11:28 p.m.

**Action:** 1 speaker. M/S/C (Hahn/Arreguin) to hold over Items 46 and 47 to December 4, 2019.

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

Councilmember Wengraf absent 11:17 p.m. – 11:28 p.m.

## Council Action Items

### 47. Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations

**From: Councilmembers Davila and Harrison**

**Recommendation:** Short-term Referral to the Planning Commission and Design Review Committee (DRC) to research and draft an Urban Forestry Ordinance requiring tree planting upon completion of new residential construction and certain alterations. The Planning Commission and DRC should consider the following:  
-Establishing appropriate tree planting requirements, e.g. a ratio of trees required per square foot, for new single-family and multi-family construction, as well as qualifying alterations to existing residential buildings. -Establishing appropriate tree planting requirements for larger projects, including options to plant trees at alternative locations identified by the City and within the City limits. The developer should incur the cost of maintenance of the trees for a defined period of years after planting.  
-Establishing appropriate California Natives species requirements. Refer to the California Native Plant Society for a list of eligible trees. <https://www.cnps.org/>

**Financial Implications:** Unknown

Contact: Cheryl Davila, Councilmember, District 2, 981-7120

**Action:** Item held over to December 4, 2018.

## Information Reports

### Information Reports

- 48. City Council Short Term Referral Process – Monthly Update**  
**From: City Manager**  
Contact: Mark Numainville, City Clerk, 981-6900  
**Action:** Item held over to December 4, 2018.
- 49. Condominium Conversion Program – Annual Report**  
**From: City Manager**  
Contact: Kelly Wallace, Housing and Community Services, 981-5400  
**Action:** Received and filed.
- 50. LPC NOD: 2355 Telegraph Avenue / #LMSAP2018-0001 for the Cambridge Apartments Building**  
**From: City Manager**  
Contact: Timothy Burroughs, Planning and Development, 981-7400  
**Action:** Received and filed.
- 51. LPC NOD: 2580 Bancroft Way / LMSAP#2017-0007**  
**From: City Manager**  
Contact: Timothy Burroughs, Planning and Development, 981-7400  
**Action:** Received and filed.
- 52. LPC Annual Report to City Council for the period May 2017 to May 2018**  
**From: Landmarks Preservation Commission**  
Contact: Fatema Crane, Commission Secretary, 981-7400  
**Action:** Received and filed.
- 53. City Auditor’s Snapshot: Quarterly Summary Report on Audit Recommendations**  
**From: Auditor**  
Contact: Ann-Marie Hogan, Auditor, 981-6750  
**Action:** Received and filed.
- 54. Update on Berkeley Library Whistleblowers**  
**From: Councilmember Worthington**  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Received and filed.

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

## Adjournment

**Action:** M/S/C (Maio/Harrison) to adjourn the meeting in memory of:

1. Tony Wuichet, Berkeley Small Business Owner, Artist, Spouse of City Auditor Ann-Marie Hogan
2. Mayor George Moscone and Supervisor Harvey Milk on the 40<sup>th</sup> Anniversary of their assassination
3. Persons affected by California wildfires
4. Palestinians killed in Gaza
5. Gene Rocklin, Local Activist
6. Amunka Davila, Berkeley Neighbor

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

Councilmember Droste absent 11:26 p.m. – 11:28 p.m.

Adjourned at 11:28 p.m.

This is to certify that the foregoing is a true and correct record of the regular meeting of November 27, 2018 as approved by the Berkeley City Council.

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Mark Numainville, City Clerk

## Communications

### **Item 44: FY 2018 Year-End Results and FY 2019 First Quarter Budget Update**

1. "Fund Underground Study Phase 3" form letters: 148 emails

#### **Undergrounding Supervisor**

2. Kristina Grondahl
3. Frances Kandl
4. Nico Pemantle
5. Linnea Christiani
6. Rachel Sing
7. Charles and Gail Drulis
8. Pamela Blair
9. Marilyn and Harry Margulius
10. Robert Mathews
11. Russell and Kathleen Lopes
12. Barbara Lewis



- 13. Walter and Milly Alvarez
- 14. Fred Dodsworth
- 15. George Buffington
- 16. Kim Marder
- 17. Terry
- 18. Cynthia Larson

**Support for Scooter Share Pilot Program**

- 19. Commission on Aging

**Marina Fund Request – One-Time Funding**

- 20. Parks and Waterfront Commission

**Cameras in San Pablo Park**

- 21. David Freeling

**Stop Pesticides, Save the Trees**

- 22. Isis Feral

**Illegal Creation of Additional Lanes of Traffic**

- 23. Val Cipollone

**FlixBus Franchise Agreement**

- 24. Tay Costa, on behalf of FlixBus

**Homeless Encampments**

- 25. Pedro Alvarez, Jr.
- 26. Richard James

**Free Speech for Humans**

- 27. Phoebe Anne Sorgen

**Trash Pickup at Harriet Tubman Terrace (HTT)**

- 28. Darinxoso Oyamasela
- 29. Chris Slama, Community Manager of HTT
- 30. Environmental Health Department

**ADA Issues of New Parking Structure**

- 31. Barbara Brust

**Renew Item 25 of the October 30, 2018 Agenda and Rescind**

- 32. Calvin Justice

**People's Park**

- 33. Unknown

**Substance Abuse Resources**

34. Cassidy Webb

**Sidewalk Ordinance**

35. Sarah Garrett

**RV's on 8<sup>th</sup> and Gilman**

36. Ann Nguyen

**Supplemental Communications and Reports 1**

**Item #23: Request from Bay Area Migrant Welcome Committee for City of Berkeley welcome and contributions to accompany these migrant asylum seekers to the US and specifically to the Bay Area**

37. Revised material, submitted by Councilmember Davila.

**Item #25: Comprehensive Investment Policy based on ESG Principles**

38. Peace and Justice Commission

**Item #26: Short Term Referral to Expedite Components of the More Student Housing Now Resolution, and budget referral to the annual appropriation ordinance adoption**

39. Vote Yes on Item 25, form letters: 6 emails

**Item #38: ZAB Appeal: 3000 Shattuck Avenue, Use Permit #ZP2015-0229**

40. Supplemental materials, submitted by the Planning Department

**Item #41: Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses**

41. Heather Haxo Phillips, on behalf of the Lorin Business District

**Item #42: Proposed Amendment to Berkeley's Minimum Wage Ordinance: Berkeley Municipal Code Chapter 13.99**

42. Revised material, submitted by Councilmember Davila

**Item #44: FY2018 Year-end Results and FY 2019 First Quarter Budget Update**

43. Supplemental materials, submitted by Mayor Arreguin

44. Fund Underground Study Phase 3 form letters: 88 emails

**Item #45: Amendment: FY 2019 Annual Appropriations Ordinance**

45. Supplemental materials, submitted by the City Clerk's Department.

**Supplemental Communications and Reports 2**

**Item #1: Safe Storage of Firearms; Adding Berkeley Municipal Code Chapter 13.69**

46. Juliet Leftwich

**Item #20: Encouraging Long-Term Tenant Stability**

47. Revised material, submitted by Councilmember Maio

**Item #24: Short-Term Referral to City Manager and Office of Energy and Sustainable Development to Draft Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits**

48. Revised material, submitted by Councilmember Harrison

**Item #26: Short Term Referral to Expedite Components of the More Student Housing Now Resolution, and budget referral to the annual appropriation ordinance adoption**

49. Supplemental material, submitted by Councilmember Worthington

50. Vote Yes on Item 26, form letters: 11 emails

**Item #30: Refer the Transportation Commission to consider incentives for the public to use sustainable modes of transportation similarly to Bologna, Italy.**

51. Supplemental material, submitted by Councilmember Worthington

**Item #32: Refer to the City Manager to consider boycotting Amazon for its role in tracking immigrants in cooperation with ICE**

52. Supplemental material, submitted by Councilmember Worthington

**Item #33: Referral to the Transportation Commission: Explore Possibilities for Initiating Equitable Exchange with Transportation Network Companies (TNC)**

53. Supplemental material, submitted by Councilmember Worthington

**Item #35: Referral for City Manager to Take a Fresh Look at Repurposing the Old City Hall Building**

54. Similarly worded from letters: 16 emails

55. Summer Brenner

56. Nick Galloro

57. Mike Lee

58. Leah Mazel

59. Miguel

60. Carol Denney

61. Janice Schroeder (2)

62. Jonathan Walden

63. Melissa Quilter

64. Arnold Kessler

65. Eric Friedman

66. David Trachtenberg

67. Bruce Bagnell

68. Jennifer Pearson

69. Tom Luce

70. Kelly Hammargren

71. Julia Cato

72. Sarah Herbold

- 73. Christopher Kroll
- 74. Elliot Halpern
- 75. M. Zint
- 76. Boona Cheema
- 77. Geraldine Clifford
- 78. Ben Buettner
- 79. Mischa Lorraine
- 80. Josh Maddox
- 81. Denah Bookstein
- 82. David Mayer
- 83. Osha Neumann
- 84. Genevieve Wilson
- 85. Joseph Michael
- 86. Vera Hannush
- 87. Nuha Khalfay

**Item# 36: Support League of California Cities' Efforts to "Stop Wandering Weed"**

- 88. Supplemental material, submitted by Councilmember Worthington

**Item #38: ZAB Appeal: 3000 Shattuck Avenue, Use Permit #ZP2015-0229**

- 89. Patrick Sheahan
- 90. Robert Lauriston
- 91. Gale Garcia

**Item #44: FY2018 Year-end Results and FY 2019 First Quarter Budget Update**

- 92. Fund Underground Study Phase 3, similarly-worded form letters: 15 emails
- 93. Use Mid-Year Budget to Fund Undergrounding Utilities, similarly-worded from letters: 10 emails
- 94. Doug
- 95. Peter Barglow

**Item #41: Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses**

- 96. 100 Communications submitted via Berkeley Considers, includes summary information

**Supplemental Communications and Reports 3**

**Item #1: Safe Storage of Firearms; Adding Berkeley Municipal Code Chapter 13.69**

- 97. Students Demand Action Berkeley High School

**Item #17: North Berkeley BART Site Recommendations**

- 98. David Ying

**Item #22: Budget Referral: Gun Buyback and Art of Peace Program**

- 99. Unknown

**Item #23: Request from Bay Area Migrant Welcome Committee for City of Berkeley welcome and contributions to accompany these migrant asylum seekers to the US and specifically to the Bay Area**

100. Revised material, submitted by Councilmember Davila

**Item #26: Short Term Referral to Expedite Components of the More Student Housing Now Resolution, and budget referral to the annual appropriation ordinance adoption**

101. Student Housing form letters: 16 emails
102. Marcus Pasimio
103. Igor Tregub
104. Dana Alpert
105. Dohee Kim

**Item #35: Referral for City Manage to Take a Fresh Look at Repurposing the Old City Hall Building**

106. David MacFadden-Elliott
107. Robin McDonnell and David Mayer, on behalf of the McKinley Addison Allston Grant Neighborhood Association
108. Ben Buettner
109. Cindy Shamban
110. Nilang
111. Tom Rothschild
112. Chimey Lee
113. Thomas Lord
114. Ezra Alanis
115. Jean Cain
116. Regina Kim
117. Martha Knobler
118. Idalys Perez
119. Amanda Reilly
120. Gael Alcock
121. Barbara Brust
122. Moni Law
123. Lisa Carey

**Item #38: ZAB Appeal: 3000 Shattuck Avenue, Use Permit #ZP2015-0229**

124. Patrick Sheahan, Commissioner of the Zoning Adjustments Board
125. Nathan George
126. Christine Schwartz
127. Athan Magganas
128. Mark Rhoades

**Item #41: Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses**

129. Presentation, submitted the Office of Economic Development

**Item #43: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program**

130. Charley Pappas, District 6, Berkeley Cannabis Commission

**Item #44: FY2018 Year-end Results and FY 2019 First Quarter Budget Update**

131. Helaine and Blair Prentice

132. Bruce Winkelman

133. Ray White

134. Robert Hester

135. Julian Waldo

136. Tom Lent

137. Dan Leaverton

138. Colleen Busch

139. Charles Ferguson

140. Lisa Lutzker

141. Victoria Legg

**Item #46: Structure for City Council Standing Policy Committees**

142. Revised material, submitted by the City Clerk's Department

**HS Lordships Remodel**

143. D. Caraway, Architect

**Berkeley Historical Society's Holiday Open House**

144. Unknown

**MINUTES  
BERKELEY CITY COUNCIL MEETING  
Tuesday, December 4, 2018  
6:00 PM**

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

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 6:05 p.m.

**Present:** Maio, Davila, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin

**Absent:** None

**Ceremonial Matters:**

- 1. Recognition of outgoing City Councilmembers and City Auditor.

Recess 7:55p.m. – 8:15 p.m.

**City Manager Comments:** None

**City Auditor Comments:** None

**Public Comment on Non-Agenda Matters:** 8 speakers.

**Consent Calendar**

**Public Comment on Consent Calendar and Information Items Only:** 4 speakers.

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

**Vote:** All Ayes.

## Consent Calendar – Continued Business

- A. Safe Storage of Firearms; Adding Berkeley Municipal Code Chapter 13.69**  
*(Continued from November 27, 2018)*  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,633-N.S. adding Berkeley Municipal Code Chapter 13.69 regarding safe storage of firearms.  
**First Reading Vote:** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.  
**Financial Implications:** Minimal  
Contact: Farimah Brown, City Attorney, 981-6950  
**Action:** Adopted second reading of Ordinance No. 7,633-N.S.
- B. Amendment: FY 2019 Annual Appropriations Ordinance** *(Continued from November 27, 2018)*  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,634-N.S. amending the FY 2019 Annual Appropriations Ordinance No. 7,617–N.S. for fiscal year 2019 based upon recommended re-appropriation of committed FY 2018 funding and other adjustments authorized since July 1, 2018, in the amount of \$152,385,440 (gross) and \$105,727,086 (net).  
**First Reading Vote:** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000  
**Action:** Adopted second reading of Ordinance No. 7,634-N.S.

## Consent Calendar

- 1. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on December 4, 2018**  
**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:** Parks Tax Fund - \$375,000  
Contact: Henry Oyekanmi, Finance, 981-7300  
**Action:** Approved recommendation.



## Consent Calendar

**2. Jointly Apply for and Accept \$1.3M in State of California No Place Like Home Program (NPLH) Funds and Award NPLH Technical Assistance Funds to the Berkeley Way Development**

**From: City Manager**

**Recommendation:** Adopt three Resolutions that enable the proposed Berkeley Way development project to access State of California No Place Like Home program funds by:

1. Authorizing the City Manager to apply for and accept the City's Noncompetitive Allocation of State of California No Place Like Home (NPLH) housing program funds. The Department of Housing and Community Development requires this resolution before the City can submit an application for a specific development project;
2. Authorizing the City Manager to prepare and submit a joint application with the proposed Berkeley Way development for Berkeley's \$1,350,299 in State No Place Like Home funds;
3. Awarding \$65,000 in State No Place Like Home (NPLH) Technical Assistance program funding to the proposed Berkeley Way development; and
4. Authorizing the City Manager to take actions needed for the City's participation in the No Place Like Home program by adopting state-required terms about submitting applications, entering into the State's Standard Agreement and other documents, and providing mental health services for tenants of the resulting housing. The Department of Housing and Community Development requires this resolution before the City can submit an application for a specific development project.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, 981-5400 68,690–N.S. (Accept NPLH Funds); Resolution No. 68,691–N.S. (Award NPLH Funding); and Resolution No. 68,692–N.S. (Participate in NPLH).

**3. Reserving Up to an Additional \$12.5M in Housing Trust Funds for the Berkeley Way Development**

**From: City Manager**

**Recommendation:** Adopt a Resolution reserving up to an additional \$12.5M in Housing Trust Funds for the potential Berkeley Way development, bringing the total reserved amount to up to \$23.5 million, contingent on the development's securing full funding and any required land use approvals and permits in the next twenty-four months.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 68,693–N.S.

## Consent Calendar

### 4. 2019 Health Plan Changes

**From: City Manager**

**Recommendation:** Adopt two Resolutions:

1. Approving rates for the Kaiser Health Maintenance Organization (HMO) health plans as follows: (a) -0.44% decrease for Kaiser S1 Group #60 (Active Group); (b) -0.95% decrease for the HSA-Qualified Deductible HMO Plan (Active Group); (c) -3.38% increase for Pre-Medicare Eligible Retirees (Retiree Group); and (d) 6.08% increase for Post-65 Senior Advantage (Retiree Group).
2. Approving rates for the Sutter Health Plus health plans as follows: (a) 5.04% increase for HMO Group (Active Group); and (b) 9.13% increase for Pre-Medicare HMO Group (Retiree Group).

The health plan premium rates will be effective for the period of January 1, 2019 through December 31, 2019.

**Financial Implications:** See report

Contact: LaTanya Bellow, Human Resources, 981-6807

**Action:** Adopted Resolution No. 68,694–N.S. (Kaiser); and Resolution No. 68,695–N.S. (Sutter Health) revised in Supplemental Reports Packet #2 to correct 2018 Monthly Premium Rates and correlating percentages for Kaiser Senior Advantage Retiree Group Plan.

### 5. Fee Assessment – State of California Self-Insurance Fund (Workers' Compensation Program)

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2019 for administering the Workers' Compensation Program, in an amount not to exceed \$219,000.

**Financial Implications:** See report

Contact: LaTanya Bellow, Human Resources, 981-6800

**Action:** Adopted Resolution No. 68,696–N.S.

### 6. Contract No. 10853A Amendment: Atera Prime, Inc. DBA Emgage, Inc. for Sharepoint and Intranet Implementation Services

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10853A with Atera Prime, Inc. DBA Emgage Inc. for implementation services of Emgage's Sharepoint and Intranet implementation services, for an amount not-to-exceed \$72,000 and a total contract value not-to-exceed \$156,275 from March 28, 2018 to June 30, 2020.

**Financial Implications:** See report

Contact: Savita Chaudhary, Information Technology, 981-6500

**Action:** Adopted Resolution No. 68,697–N.S.

## Consent Calendar

### 7. Beverage Container Recycling City/County Payment Program

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to submit an application to the Department of Resources Recycling and Recovery (CalRecycle) for the Beverage Container Recycling City/County Payment Program for the period of December 4, 2018 through December 3, 2023; to accept funds and execute all necessary applications, payment requests, agreements and any amendments; and to appropriate funding for related expenditures, subject to securing the program funds.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, 981-6300

**Action:** Adopted Resolution No. 68,698–N.S.

### 8. Adopt a Shared Electric Scooter Pilot Program

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the terms and conditions for a Shared Electric Scooter Pilot Franchise Program.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, 981-6300

**Action:** M/S/C (Arreguin/Maio) to accept revised material from staff on Item 8.

**Vote:** All Ayes.

**Action:** Moved to Action Calendar. 12 speakers. M/S/C (Worthington/Hahn) to adopt Resolution No. 68,699–N.S. amended to include provisions for privacy, reporting to Council, public survey, and compliance measures and refer comments from the Council to staff for consideration.

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

## Council Consent Items

### 9. Appointment of Vice-President of the Council

**From: Mayor Arreguin**

**Recommendation:** Rescind Resolution No. 67,768-N.S. and adopt a Resolution establishing a one-year term for the office of Vice-President of the Council, to be appointed at the first Council meeting in December every year.

**Financial Implications:** None

Contact: Jesse Arreguin, Mayor, 981-7100

**Action:** Moved to Action Calendar. 3 speakers. M/S/C (Arreguin/Hahn) to adopt Resolution No. 68,700–N.S. as revised in Supplemental Reports Packet #2 to allow for appointments over a two-year period.

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

## Council Consent Items

10. **Appointment of Councilmember Sophie Hahn as Vice-President of the Council From: Mayor Arreguin and Councilmember Bartlett**  
**Recommendation:** Adopt a Resolution appointing Councilmember Sophie Hahn to be the Vice-President of the Council for a term of one year beginning December 2018 to December 2019.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Moved to Action Calendar. 2 speakers. M/S/C (Maio/Worthington) to adopt Resolution No. 68,701–N.S. as revised in Supplemental Reports Packet #2 to appoint Councilmember Wengraf as Vice-President of the Council starting December 2018 and Councilmember Hahn starting December 2019.  
**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.
11. **Revitalization of the Civic Center Park Fountain From: Mayor Arreguin, Councilmembers Harrison and Hahn**  
**Recommendation:** Refer to the City Manager to work with the Turtle Island Fountain Project in developing a plan to revitalize the fountain at Martin Luther King Jr. Civic Center Park.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Councilmember Bartlett added as a co-sponsor. Approved recommendation amended to refer to staff to consider this referral as part of the Civic Center Park visioning RFP.
12. **Authorizing Additional Inclement Weather Shelter from December 2018-April 2019 From: Mayor Arreguin**  
**Recommendation:**  
1. Authorize the City Manager to open an additional as-needed inclement weather Winter Shelter from December 2018-April 2019 to provide a safe, dry indoor location for our unhoused community;  
2. Approving the allocation of \$60,000 in funding for this additional inclement weather shelter with funds from the June 26, 2018 budget appropriation for an expanded Emergency Shelter program or by state Homeless Emergency Aid Program (HEAP) funding; and  
3. Authorizing the City Manager to amend Contract No. 10577B with Dorothy Day House for the operation of the as-needed inclement weather shelter.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Councilmembers Davila, Hahn, and Bartlett added as co-sponsors. Approved recommendation.

## Action Calendar – Public Hearings

### C. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses *(Continued from November 27, 2018)*

**From: City Manager**

**Recommendation:** Conduct a public hearing and adopt the first reading of an Ordinance amending the Berkeley Municipal Code to streamline and clarify the permitting process for small businesses in commercial districts by:

1. Reducing the amount of parking required for businesses moving into existing commercial spaces;
2. Simplifying food service categories by reducing them from three to one;
3. Reducing permitting time and costs for small businesses that request a change of use in existing commercial spaces;
4. Clarifying the permit process for new business types that may not be specifically defined in the City's zoning rules;
5. Making 'commercial recreation' uses (such as bowling alleys, miniature golf courses or ping pong clubs) easier to permit in commercial districts; and
6. Streamlining the permit process and providing clear performance standards for restaurants that wish to serve beer and wine.

The ordinance would amend Berkeley Municipal Code Chapters 23E.16, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, and 23E.98.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Jordan Klein, Economic Development, 981-7530

**Public Testimony:** The Mayor opened the public hearing. 3 speakers.

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

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

Councilmember Worthington absent 10:05 p.m. – 10:29 p.m.

Councilmember Davila absent 10:25 p.m. – 10:33 p.m.

**Action:** M/S/C (Droste/Maio) to adopt first reading of Ordinance No. 7,635–N.S. as proposed by staff and amended as follows:

- Refer to staff and the Planning Commission to consider amendments related to beer and wine sales in the M District.
- Retain the 300-foot noticing requirement for all projects whose level of review will be reduced from UP(PH) to AUP; and report to Council on the effects of the requirement after one year.
- Retain the requirement for findings for AUPs for food establishments in the C-W district. Second reading scheduled for December 11, 2018.

**Vote:** All Ayes.

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

**Vote:** All Ayes.

## Action Calendar – Public Hearings

### 13. Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review

**From: City Manager**

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

1. Adopt a Resolution amending the General Plan land use designations for a portion of 1050 Parker Street / 2621 Tenth Street from a Manufacturing designation to Avenue Commercial, and amending the West Berkeley Plan land use designation from Mixed Use / Light Industrial to General Commercial (Amendments affect Assessor Parcel Numbers (APNs): 054-1763-001-03, 054-1763-010-00); and
2. Adopt first reading of an Ordinance:
  - a. Rezoning a portion of the project site from Mixed Use – Light Industrial (MU-LI) to West Berkeley Commercial (C-W) (Amendments affect APNs 054-1763-001-03 and 054-1763-010-00); and
  - b. Amending the C-W District development standards to allow for a 4-story / 50-foot tall building on the subject property (Amendments affect APNs 054-1763-001-03, 054-1763-010-00, and 054-1763-003-03); and
3. Adopt a Resolution adopting findings under the California Environmental Quality Act (CEQA) that determine how potential impacts are to be mitigated, to adopt an Initial Study / Mitigated Negative Declaration that concludes that all impacts of the rezone and re-designations can be reduced to a less-than-significant level under CEQA, and to adopt a Mitigation Monitoring and Reporting Program that ensures the measures will be implemented.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400

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

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

**Public Testimony:** The Mayor opened the public hearing. 10 speakers.

M/S/C (Wengraf/Harrison) to continue the public hearing to a date certain: December 11, 2018.

**Vote:** All Ayes.

## Action Calendar – Continued Business

- D. Structure for City Council Standing Policy Committees** *(Continued from November 27, 2018. Item contains supplemental materials)*  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the framework and procedures for standing policy committees of the City Council as part of the City's legislative process.  
**Financial Implications:** See report  
Contact: Dee Williams-Ridley, City Manager, 981-7000  
**Action:** M/S/C (Arreguin/Worthington) to hold over Items D and E to December 11, 2018.  
**Vote:** All Ayes.
- E. Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program** *(Continued from November 27, 2018)*  
**From: Councilmembers Bartlett, Worthington, and Davila**  
**Recommendation:** That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.  
**Financial Implications:** Minimal  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130  
**Action:** Item E held over to December 11, 2018.
- F. Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations** *(Continued from November 27, 2018)*  
**From: Councilmembers Davila and Harrison**  
**Recommendation:** Short-term Referral to the Planning Commission and Design Review Committee (DRC) to research and draft an Urban Forestry Ordinance requiring tree planting upon completion of new residential construction and certain alterations. The Planning Commission and DRC should consider the following:  
-Establishing appropriate tree planting requirements, e.g. a ratio of trees required per square foot, for new single-family and multi-family construction, as well as qualifying alterations to existing residential buildings. -Establishing appropriate tree planting requirements for larger projects, including options to plant trees at alternative locations identified by the City and within the City limits. The developer should incur the cost of maintenance of the trees for a defined period of years after planting.  
-Establishing appropriate California Natives species requirements. Refer to the California Native Plant Society for a list of eligible trees. <https://www.cnps.org/>  
**Financial Implications:** Unknown  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Item F held over to December 11, 2018.

## Action Calendar – Continued Business

- G. City Council Short Term Referral Process – Monthly Update** *(Continued from November 27, 2018)*  
**From: City Manager**  
Contact: Mark Numainville, City Clerk, 981-6900  
**Action:** Amended to add back to the list Item C from the 12/5/2017 agenda titled Ministerial Approval of Zoning-Compliant Affordable Housing. Moved to Consent Calendar.

## Action Calendar – New Business

- 14. Presentation: Pedestrian Master Plan Update**  
**From: City Manager**  
**Contact:** Phillip Harrington, Public Works, 981-6300  
**Action:** M/S/C (Arreguin/Worthington) to refer Item 14 to the Agenda Committee for future scheduling.  
**Vote:** All Ayes.
- 15a. Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties**  
**From: Community Environmental Advisory Commission**  
**Recommendation:** Since the drought-storm-flooding cycle is predicted to get worse, refer to the City Manager to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period. The City Manager and staff should consider the following: - Comply beyond the State and Alameda County current requirements; -Encourage the treating and detaining of runoff up to approximately the 85th per-centile of water deposited in a 24-hour period; -Establish site design measures that include minimizing impervious surfaces; -Require homeowners to include flooding offsets in preparing properties for sale; - Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff; -Require abatements for newly paved areas over a specific size; -Make exceptions for properties that offer significantly below-market rent or sale prices; -Authorize a fee for all new construction or for title transfer to cover the cost of required compliance inspections. -Incorporate these measures for private property with similar measures for Public Works, while coordinating with EBMUD, BUSD, UCB and LBNL.  
**Financial Implications:** See report  
Contact: Viviana Garcia, Commission Secretary, 981-7460



## Action Calendar – New Business

**15b. Companion Report to Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties**

**From: City Manager**

**Recommendation:** Express appreciation for the intent of the Community Environmental Advisory Commission (CEAC) recommendation to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period, and allow staff to continue existing efforts to implement Municipal Regional Stormwater Permit regulations in coordination with the 14 other local governments and agencies that participate in the Alameda Countywide Clean Water Program.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Phillip Harrington, Public Works, 981-6300

**Action:** Items 15a and 15b held over to December 11, 2018.

**16. Adopt an Ordinance to amend BMC Chapter 3.80 allow Mayor and City Council employees serve as a Commissioner**

**From: Councilmember Worthington**

**Recommendation:** Adopt revisions to Chapter 3.80 in Berkeley Municipal Code (BMC) concerning Membership On Boards And Commissions to allow City Staff and/or Mayor and City Council employees to serve as a Commissioner by repealing section 3.80.030.

**Financial Implications:** Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

**Action:** Item 16 removed from the agenda by Councilmember Worthington.

## Information Reports

**17. City Council Referral Process – 2018 Interim Update**

**From: City Manager**

Contact: Mark Numainville, City Clerk, 981-6900

**Action:** Received and filed.

**18. Civic Arts Commission 2018-2019 Work Plan**

**From: Civic Arts Commission**

Contact: Jennifer Lovvorn, Commission Secretary, 981-7530

**Action:** Received and filed.

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

## Adjournment

**Action:** M/S/C (Harrison/Maio) to adjourn the meeting in memory of:

1. Deanna Despain, Former Berkeley City Clerk
2. George H. W. Bush, 41<sup>st</sup> President of the United States

**Vote:** All Ayes.

Adjourned at 11:44 p.m.

This is to certify that the foregoing is a true and correct record of the regular meeting of December 4, 2018 as approved by the Berkeley City Council.

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Mark Numainville, City Clerk

## **Communications**

### **Okinawa Environmental Justice organization**

1. Diana Bohn

### **Teenager and Grandson of Holocaust Survivors Demand Climate Action**

2. Jane Kelly

### **Adding Attic Insulation Requires Hardwired Smoke and CO Detectors**

3. David Lerman

### **Open Shelters Now**

4. Adam Kol

### **Mayor's Comments on November 9<sup>th</sup>, J Article**

5. Carol Sanders (2)

### **2-1-1 Monthly Report for October 2018**

6. Eden I&R

## **Supplemental Communications and Reports 1**

### **Item #13: Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review**

7. Mitchel Bornstein

### **Item #18: Civic Arts Commission 2018-2019 Work Plan**

8. Gina Moreland
9. Laurie Rich

## Supplemental Communications and Reports 2

### **Item #4: 2019 Health Plan Changes**

10. Revised material, submitted by Human Resources

### **Item #8: Adopt a Shared Electric Scooter Pilot Program**

11. Bryce Nesbitt

12. Irene Rosenthal

### **Item #9: Appointment of Vice-President of the Council**

13. Revised material, submitted by Mayor Arreguin

### **Item #10: Appointment of Councilmember Sophie Hahn as Vice-President of the Council**

14. Revised material, submitted by Mayor Arreguin

### **Item #13: Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review**

15. Patrick Sheahan

16. Rick Auerback

### **Item E: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program**

17. Brian Cliff

18. Jerry McDaniel

19. Bill Hsu

20. Charles Pappas

### **Item F: Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations**

21. Miranda Ewell, Bernard Marszalek and Stephen Most

### **Item #15a: Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties**

22. Jim McGrath

### **Item #16: Adopt an Ordinance to amend BMC Chapter 3.80 allow Mayor and City Council employees serve as a Commissioner**

23. Evan McDonald

24. Sharon Rudnick

25. Carol Strand

26. April Gilbert

27. Jack Kurzweil

28. Marti Grubb

29. Mark Stuhr

30. Fran Haselsteiner

31. Don Melandry

- 32. Eric Friedman
- 33. Jessica Behrman
- 34. Steven Berger
- 35. Wende Micco
- 36. Judy Hunt
- 37. Barbara Gilbert

**Item #18: Civic Arts Commission 2018-2019 Work Plan**

- 38. Paula Shryne

**Supplemental Communications and Reports 3**

**Item #8: Adopt a Shared Electric Scooter Pilot Program**

- 39. Revised material, submitted by Public Works
- 40. George Porter

**Item #C: Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses**

- 41. Presentation, submitted by Office of Economic Development
- 42. Loni Gray
- 43. Nicole Meyer and Chris Meyer

**Item #13: Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review**

- 44. Presentation, submitted by Planning

**Item E: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program**

- 45. Carol Denney

**Item F: Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations**

- 46. Theo Posselt

**Item #14: Pedestrian Master Plan Update**

- 47. Presentation, submitted by Transportation Department

**Item #16: Adopt an Ordinance to amend BMC Chapter 3.80 allow Mayor and City Council employees serve as a Commissioner**

- 48. Carol Denney

**Mobility Systems**

- 49. Avotcja Jiltonilro

**In Appreciation of Councilmember Maio**

50. Friends of Ohlone Park

**Fountain Project at MLK Civic Center Park**

51. Unknown

**MINUTES  
SPECIAL MEETING OF THE  
BERKELEY CITY COUNCIL**

**Thursday, December 6, 2018**

**4:00 P.M.**

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

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 4:10 p.m.

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

**Absent:** Bartlett, Maio, Worthington, Arreguin

Mayor Arreguin present at 5:16 p.m.

**Worksession**

**1. Climate Action Plan Update**

**From: City Manager**

Contact: Timothy Burroughs, Planning and Development, 981-7400

**Action:** 3 speakers. Presentation made and discussion held.

**2. Semi-Annual Report on Measure T1 City Infrastructure Bond Program**

**From: City Manager**

Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700;

Phillip Harrington, Public Works, 981-6300

**Action:** 2 speakers. Presentation made and discussion held.

Recess from 6:27 p.m. - 6:41 p.m.

**3. Update on the Berkeley Strategic Plan**

**From: City Manager**

Contact: Paul Buddenhagen, City Manager's Office, 981-7000

**Action:** 1 speaker. Presentation made and discussion held.

## Adjournment

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

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

Adjourned at 7:26 p.m.

This is to certify that the foregoing is a true and correct record of the special meeting of December 6, 2018 as approved by the Berkeley City Council.

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April Richardson, Assistant City Clerk

## Communications

- None

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

### Item #1: Climate Action Plan Update

1. Kelly Hammargren

## Supplemental Communications and Reports 3

### Item #1: Climate Action Plan Update

2. Presentation, submitted by the Planning Department

### Item #2: Semi-Annual Report on Measure T1 City Infrastructure Bond Program

3. Presentation, submitted by Public Works and Parks, Recreation & Waterfront
4. Attachment 1 of the above presentation, submitted by PW and PRW.

### Item #3: Update on the Berkeley Strategic Plan

5. Presentation, submitted by the City Manager's Office

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, December 11, 2018**  
**6:00 PM**

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

**Preliminary Matters**

**Roll Call:** 6:07 p.m.

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

**Absent:** None

**Ceremonial Matters:**

1. Swearing in of newly elected and re-elected officials.
2. Recognition of Judith Montell, Berkeley Filmmaker
3. Recognition of Berkeley High African American Studies Program

**City Manager Comments:** None

**City Auditor Comments:**

The City Auditor provided general introductory remarks about audit priorities and highlighted items #13 and #15 on the agenda regarding street paving and future steps on these audits.

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

**Consent Calendar**

**Public Comment on Consent Calendar and Information Items Only:** 28 speakers.

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

**Vote:** All Ayes.

Recess 8:12 p.m. – 8:32 p.m.



## Consent Calendar – Continued Business

**A. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses** *(Continued from December 4, 2018)*

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,635-N.S. amending the Berkeley Municipal Code to streamline and clarify the permitting process for small businesses in commercial districts by: 1. Reducing the amount of parking required for businesses moving into existing commercial spaces; 2. Simplifying food service categories by reducing them from three to one; 3. Reducing permitting time and costs for small businesses that request a change of use in existing commercial spaces; 4. Clarifying the permit process for new business types that may not be specifically defined in the City's zoning rules; 5. Making 'commercial recreation' uses (such as bowling alleys, miniature golf courses or ping pong clubs) easier to permit in commercial districts; and 6. Streamlining the permit process and providing clear performance standards for restaurants that wish to serve beer and wine.

The ordinance would amend Berkeley Municipal Code Chapters 23E.16, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, and 23E.98.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Jordan Klein, Economic Development, 981-7530

**Action:** Moved to the Action Calendar. 1 speaker. M/S/C (Droste/Wengraf) to adopt a new first reading of the ordinance amended to remove the noticing requirements for AUP projects. Second reading of Ordinance No. 7,635-N.S. scheduled for January 22, 2019.

**Action:** On the severed portion to remove the additional noticing requirement for AUP projects.

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

**Action:** On the severed portion to adopt the new first reading of the ordinance.

**Vote:** All Ayes.

## Consent Calendar

### 1. **Confirming the Results of the November 6, 2018, General Municipal Election**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution: a) Confirming the results of the November 6, 2018, General Municipal Election; and b) Declaring the passage of Measure O – General Obligation Bond for Affordable Housing, Measure P – Transfer Tax Measure, Measure Q – Amendments to the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance, and Measure R – Advisory Measure - Vision 2050.

2. Adopt two Ordinances amending the Berkeley Municipal Code to incorporate the passage of Measure P – Transfer Tax Measure, and Measure Q - Amendments to the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance.

3. Adopt two Resolutions codifying the text of Measure O – General Obligation Bond for Affordable Housing, and Measure R – Advisory Measure - Vision 2050.

**Financial Implications:** None

Contact: Mark Numainville, City Clerk, 981-6900

**Action:** 1. Adopted Resolution No. 68,702–N.S. (Confirming Results) as revised in Supplemental Reports Packet #2 to include the final certified precinct-by-precinct results and the certifications by the Registrar of Voters and the City Clerk ; 2.

Adopted Ordinance No. 7,636–N.S. (Measure P) and Ordinance No. 7,637–N.S.

(Measure Q); 3. Adopted Resolution No. 68,703–N.S. (Measure O) and Resolution No. 68,704–N.S. (Measure R).

### 2. **Minutes for Approval**

**From: City Manager**

**Recommendation:** Approve the minutes for the Council meeting of November 13, 2018 (regular).

**Financial Implications:** None

Contact: Mark Numainville, City Clerk, 981-6900

**Action:** Approved minutes as submitted.

### 3. **Annual Commission Attendance and Meeting Frequency Report**

**From: City Manager**

**Recommendation:** Adopt a Resolution approving a revised commission meeting frequency schedule, changing the reporting period for the annual attendance report, and accepting the annual attendance report.

**Financial Implications:** None

Contact: Mark Numainville, City Clerk, 981-6900

**Action:** Adopted Resolution No. 68,705–N.S.

## Consent Calendar

- 4. Contract: UC Berkeley Economic and Fiscal Impact Study**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract, for an amount not to exceed \$150,000, and any amendments thereto, with a vendor to be determined, to study the economic and fiscal impacts of the University of California, Berkeley on the City of Berkeley.  
**Financial Implications:** See report  
Contact: Jordan Klein, Economic Development, 981-7530  
**Action:** Adopted Resolution No. 68,706–N.S.
- 5. Contract: Wittman for Fire Inspection and Emergency Response Billing and Related Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Wittman Enterprises LLC (Contractor) to provide the following services for the Berkeley Fire Department (Department) from January 1, 2019 to December 31, 2023, in an amount of \$3,655,677, with an option to extend for ten additional years in two five-year increments in the amount of \$2,055,233 for the first option term, and \$2,157,995 for the second optional term, for a total contract amount not to exceed \$7,868,905: -Emergency response billing, and -Fire inspection billing, and -Related hardware, software, and program oversight.  
**Financial Implications:** See report  
Contact: David Brannigan, Fire, 981-3473  
**Action:** Adopted Resolution No. 68,707–N.S.
- 6. Contract No. 9111E Amendment: City Data Services to add a Housing Trust Fund Monitoring and Inspection Module**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 9111E with City Data Services (CDS) for an online data management system through June 30, 2020 to add \$35,860 for ongoing monitoring and a new monitoring module, bringing the total contract amount to \$198,630, and execute any amendments with CDS for ongoing maintenance of the community agency online applications and reporting.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, 981-5400  
**Action:** Adopted Resolution No. 68,708–N.S.

## Consent Calendar

### 7. **Memorandum of Understanding: Public Employees Union PEU Local 1**

**From: City Manager**

**Recommendation:** Adopt two Resolutions:

1. Approving a new twenty (20) month Memorandum of Understanding (hereafter referred to as "MOU") with Public Employees Local One (hereafter referred to as the "Union") with a term of October 21, 2018 through June 27, 2020 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new MOU; and
2. Approving a new salary resolution for Representation Units M, P1, and P2 that implement the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 67,485-N.S. Also, authorize the City Manager to make non substantive edits to the format and language of the Memorandum of Understanding in alignment with Council Direction, the tentative agreements and conforming to legal requirements.

**Financial Implications:** See report

Contact: LaTanya Bellow, Human Resources, 981-6800

**Action:** Adopted Resolution No. 68,709–N.S. (MOU) and Resolution No. 68,710–N.S. (Salary).

### 8. **Contract: Hyphae Design Laboratory for Citywide Restroom Assessment**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an expenditure contract, and any amendments or extensions with Hyphae Design Laboratory ("Hyphae") to perform professional consulting services for the Citywide Restroom Assessment Project in an amount not to exceed \$148,215 for the period January 1, 2019 to July 31, 2020.

**Financial Implications:** See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700

**Action:** Adopted Resolution No. 68,711–N.S.

### 9. **Contract No. 10874A Amendment: Street Level Advisors for Development Fee Feasibility Analysis**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10874A with Street Level Advisors, to analyze the impact of fees and other variables on development project feasibility and to gather additional stakeholder input, increasing the contract amount by \$30,000 to a new total not-to-exceed contract amount of \$75,400, and extending the contract period to December 31, 2019.

**Financial Implications:** See report

Timothy Burroughs, Planning and Development, 981-7400

**Action:** Adopted Resolution No. 68,712–N.S.

## Consent Calendar

- 10. Contract: Disability Access Consultants for ADA Self Evaluation and Transition Plan**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract for with Disability Access Consultants to provide an updated and comprehensive Title II Americans with Disabilities Act (ADA) Self-Evaluation and Transition Plan for one year starting February 1, 2018, in an amount not to exceed \$406,600.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,713–N.S.
- 11. Contract No. 10552A Amendment: Revel Environmental Manufacturing, Inc. for on-call Storm Water Maintenance Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10552A with Revel Environmental Manufacturing, Inc. for on-call storm water maintenance services, increasing the current contract by \$225,000 for a total contract amount not to exceed \$500,000.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,714–N.S.
- 12. Contract No. 9893B Amendment: ABM Industries for Continuing Electric Vehicle Charging Station Operations and Extended Maintenance Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a five-year contract amendment with AMB Industries to purchase Electric Vehicle (EV) charging stations, provide EV network operations and maintenance, plus extended warranty services, in an amount of \$366,962 for a total Contract not to exceed \$413,940 through June 30, 2023.  
**Financial Implications:** Various Funds - \$366,962  
Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,715–N.S.

## Consent Calendar

- 13. Contract: Gallagher & Burk, Inc. for FY 2018 Measure M Street Rehabilitation Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the FY 2018 Measure M Street Rehabilitation Project, Specification No. 18-11179-C (Re-Issued); accepting the bid of Gallagher & Burk, Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$3,863,909.  
**Financial Implications:** Street Capital Improvement Program Fund - \$3,863,909  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,716–N.S.
- 14. Letter of Support on Behalf of SB 3342 - Housing, Opportunity, Mobility, and Equity Act of 2018**  
**From: Housing Advisory Commission**  
**Recommendation:** Direct the City Manager to send a letter of support on behalf of proposed SB 3342, referred to as the HOME Act.  
**Financial Implications:** None  
 Contact: Amy Davidson, Commission Secretary, 981-5400  
**Action:** Approved recommendation.
- 15. Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan**  
**From: Public Works Commission**  
**Recommendation:** Adopt a Resolution that recommends approval of the Five-Year Street Rehabilitation Plan for FY2019 to FY2023 as proposed by Staff.  
**Financial Implications:** See report  
 Contact: Nisha Patel, Commission Secretary, 981-6300  
**Action:** Moved to Action Calendar. 8 speakers. M/S/C (Harrison/Droste) to adopt Resolution No. 68,717–N.S. that recommends approval of the Five-Year Street Rehabilitation Plan for FY2019 to FY2023 as proposed by Staff amended to include Milvia Street from Blake Street to Russell Street in FY2019. Provide direction to staff and request additional information from staff as follows:
- Review the Plan after two years
  - Consult the Transportation Commission on the Plan
  - Provide the Lifecycle analysis and the Bike Plan overlay analysis
  - Consider a two-year bid process
  - Annual report to Council on Measure M projects
  - Report to Council on the funding sources for scheduled and completed paving projects
- Vote:** All Ayes.

## Council Consent Items

**16a. Referral Response: Berkeley Single Use Foodware and Litter Reduction Ordinance**

**From: Zero Waste Commission**

**Recommendation:** Review the results of the Zero Waste Commission's community outreach and analysis provided in response to Council's referral and consider incorporating the Zero Waste Commission recommendations for improvements into the referred draft proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

**Financial Implications:** See report

Contact: Heidi Obermeit, Commission Secretary, 981-6300

**16b. Companion Report: Referral Response: Proposed Single Use Foodware and Litter Reduction Ordinance**

**From: City Manager**

**Recommendation:** Staff appreciates the Zero Waste Commission's diligent and thoughtful work and requests that Council refer their recommendations for the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance to the City Manager to review, to quantify the potential impacts, and to report back to Council with an analysis.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, 981-6300

**Action:** Moved to Action Calendar. M/S/C (Arreguin/Wengraf) to hold over Items 16a and 16b, Item D, and Item 27 to January 22, 2019.

**Vote:** All Ayes.

## Council Consent Items

**17. Seating Arrangement for Councilmembers during City Council Meetings**

**From: Mayor Arreguin**

**Recommendation:** Adopt a Resolution changing the seating placement of City Councilmembers as follows on the dais (From left to right, facing the dais): Kesarwani, Harrison, Bartlett, Hahn, Arreguin, Wengraf, Droste, Davila, Robinson.

**Financial Implications:** None

Contact: Jesse Arreguin, Mayor, 981-7100

**Action:** Adopted Resolution No. 68,718–N.S.

## Council Consent Items

- 18. Eighth Annual Martin Luther King Jr. Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund**  
**From: Mayor Arreguin, and Councilmembers Davila and Bartlett**  
**Recommendation:**
1. Adopt a Resolution co-sponsoring the 8th Annual Martin Luther King Jr. Celebration Breakfast on January 21, 2019.
  2. Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Mayor Arreguin, to the Rotary Endowment, the fiscal sponsor of the 8th Annual Martin Luther King Jr. celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.
- Financial Implications:** Mayor's Discretionary Funds - \$500  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Adopted Resolution No. 68,719–N.S. (Co-sponsor) and Resolution No. 68,720–N.S. (Expenditure) amended to include contributions from the following Councilmembers up to amounts listed: Councilmember Wengraf - \$500; Councilmember Droste - \$500; Councilmember Davila - \$200; Councilmember Harrison - \$250; Councilmember Robinson - \$150; Councilmember Hahn - \$200.
- 19. Funding for United Against Hate Week Event**  
**From: Mayor Arreguin and Councilmember Bartlett**  
**Recommendation:** Adopt a Resolution retroactively sponsoring the November 11, 2018 United Against Hate Week Kick-Off, waiving city fees and costs associated with the event and authorizing reimbursement of \$7,725 for the cost of stage and production for the event.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Councilmember Wengraf added as a co-sponsor. Adopted Resolution No. 68,721–N.S.



## Council Consent Items

### 20. Establishment of Traffic Circle Policy Task Force

**From: Mayor Arreguin and Councilmembers Davila, Bartlett, and Droste**

**Recommendation:** Establish a Traffic Circle Policy Task Force comprised of representatives of the Parks and Waterfront Commission, Transportation Commission, community representatives from the neighborhoods where traffic circles are located, and city staff in the Parks and Public Works Departments as follows: City Staff, 1 representative from the Transportation Department and 1 representative from the Parks Department; Commissions, 1 representative from the Parks and Waterfront Commission and 1 representative from the Transportation Commission; Community, Several representatives from the neighborhoods currently maintaining traffic circles, chosen from geographically diverse parts of the city and 1 representative from Berkeley Partners for Parks.

The charge of this Task Force is to: a) Evaluate the City's current traffic circle vegetation policy; and b) Conduct a community led process to update that policy to ensure pedestrian/bicycle/ vehicle safety and preserve community efforts to beautify traffic circles.

Task Force activities may include, but are not limited to: -Determine appropriate characteristics and parameters for allowed plantings; -Develop policy that ensures lines of sight and other important safety considerations; -Conducting a survey of current traffic circles and their vegetation; -Conducting a survey of neighborhood associations, neighborhood captains, community and community groups such as Berkeley Partners for Parks to determine which traffic circles are being maintained by community members; Examining the City of Oakland's 'Adopt a Spot' initiative to encourage community involvement in the maintenance of public spaces by loaning tools, supplies, and technical assistance to committed members of the community; - Hosting a presentation from City staff to better understand concerns with the current traffic circle policy and any safety concerns that should be taken into consideration; - Developing a clear set of guidelines/criteria to allow for community maintenance of traffic Circles; -Outlining the appropriate community outreach strategy and process to share the updated policy for managing vegetation in traffic circles; -Developing a replanting strategy, with emphasis on drought-resistant plants.

**Financial Implications:** See report

Contact: Jesse Arreguin, Mayor, 981-7100

**Action:** Approved recommendation as revised in Supplemental Communications Packet #2.

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

## Council Consent Items

- 21. Send a Letter to Sutter Health Requesting a Plan to Retrofit/Rebuild Alta Bates Hospital or sell to another operator**  
**From: Mayor Arreguin and Councilmembers Hahn, Harrison, and Droste**  
**Recommendation:** Direct the City Manager to send a letter to, and follow-up with, Sutter Health requesting a plan to retrofit and rebuild Alta Bates to state regulations by 2030 or agree to sell Alta Bates hospital to an operator who will maintain a full-service, acute care hospital in Berkeley. The City of Berkeley expresses its strong desire to work in collaboration with Sutter Health to develop a plan to keep a full-service, acute care hospital in Berkeley. The letter shall reference the findings from the Health Impact Assessment completed by the University of California, Department of Public Health, dated September 2018 and state that the closure of Alta Bates would: -Create a harmful cascade effect on remaining hospitals and emergency services, exacerbating already overcrowded ERs; -Lengthen wait times for hospital beds; -Reduce the ability of first responders and emergency service vehicles to respond due to increased transport times through the East Bay's congested roadways; -Disproportionally affect marginalized communities; -Impact acute care services in this region that need to be expanded, not consolidated.  
**Financial Implications:** Staff time  
 Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Approved recommendation as revised in Supplemental Communications Packet #2 and at the meeting to revise the text of the letter.
- 22. African American Tobacco Control Leadership Council (AATCL) work on reducing youth tobacco use in Berkeley: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmember Davila**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Cheryl Davila, to African American Tobacco Leadership Council for their great work reducing youth tobacco use, particularly among African American youth, in Berkeley, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila and any other Councilmembers who would like to contribute.  
**Financial Implications:** Councilmember's Discretionary Funds - \$150  
 Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Adopted Resolution No. 68,722–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Wengraf - \$100; Councilmember Harrison - \$100; Councilmember Bartlett - \$250; Councilmember Robinson - \$150; Councilmember Hahn - \$200.

## Council Consent Items

- 23. Short-term referral to City Attorney and Health Housing and Community Service to amend Berkeley Municipal Code 7,441-N.S. to expand the control of flavored tobacco across the City of Berkeley toward preventing youth and young adult tobacco use**  
**From: Councilmember Davila**  
**Recommendation:** Short-term referral to City Attorney and Health Housing and Community Service to amend Berkeley Municipal Code 7,441-N.S. according to the changes made in the attached amended ordinance to prohibit the sale of flavored tobacco products and require a minimum package size for cigars and little cigars across the City of Berkeley. The primary purpose of the amendment to the ordinance is to do more to prevent youth and young adult tobacco use.  
**Financial Implications:** None  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Councilmembers Hahn and Harrison added as co-sponsors. Approved recommendation as revised in Supplemental Communications Packet #1 to make the referral to the City Manager and further amended to include consideration of minimum package size and/or price.
- 24. Referral to City Manager to establish Recreational Vehicle Waste Discharge Facility on City Property and Referral to FY 2020/21 Budget Process**  
**From: Councilmembers Harrison and Davila**  
**Recommendation:**  
1. Refer to the City Manager to establish a recreational vehicle waste discharge facility on City property and equitable administrative fee program, and  
2. Refer costs associated with the facility to the FY 2020/21 Budget Process.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, 981-7140  
**Action:** Approved recommendation amended to include consideration of 1) method of pump out; 2) cost; 3) locations; and 4) capacity.

## Council Consent Items

**25. The Berkeley Public Library Foundation 17th Annual Authors Dinner: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**

**From: Councilmembers Hahn, Wengraf, and Droste**

**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Councilmembers Wengraf and Droste to the Berkeley Public Library Foundation's 17th Annual Authors Dinner with funds relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Councilmembers Wengraf, Droste, and any other Councilmembers who would like to contribute. The Berkeley Public Library Foundation raises funds to support and enhance the facilities, programs and services of the Berkeley Public Library. The proceeds from this event will subsidize library programs and would fulfill the municipal public purpose.

**Financial Implications:** Councilmembers' Discretionary Funds - \$500

Contact: Sophie Hahn, Councilmember, District 5, 981-7150

**Action:** Adopted Resolution No. 68,723–N.S. amended to include contributions from the following Councilmembers up to the amounts listed: Councilmember Wengraf - \$500; Councilmember Droste - \$500; Councilmember Davila - \$100; Councilmember Harrison - \$250; Councilmember Bartlett - \$250; Councilmember Robinson - \$150; Mayor Arreguin - \$500.

## Action Calendar – Public Hearings

### B. Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review *(Continued from December 4, 2018.)*

**From: City Manager**

**Recommendation:** Continue the public hearing and upon conclusion:

1. Adopt a Resolution amending the General Plan land use designations for a portion of 1050 Parker Street / 2621 Tenth Street from a Manufacturing designation to Avenue Commercial, and amending the West Berkeley Plan land use designation from Mixed Use / Light Industrial to General Commercial (Amendments affect Assessor Parcel Numbers (APNs): 054-1763-001-03, 054-1763-010-00); and
2. Adopt first reading of an Ordinance:
  - a. Rezoning a portion of the project site from Mixed Use – Light Industrial (MU-LI) to West Berkeley Commercial (C-W) (Amendments affect APNs 054-1763-001-03 and 054-1763-010-00); and
  - b. Amending the C-W District development standards to allow for a 4-story / 50-foot tall building on the subject property (Amendments affect APNs 054-1763-001-03, 054-1763-010-00, and 054-1763-003-03); and
3. Adopt a Resolution adopting findings under the California Environmental Quality Act (CEQA) that determine how potential impacts are to be mitigated, to adopt an Initial Study / Mitigated Negative Declaration that concludes that all impacts of the rezone and re-designations can be reduced to a less-than-significant level under CEQA, and to adopt a Mitigation Monitoring and Reporting Program that ensures the measures will be implemented.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400

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

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

**Action:** M/S/C (Wengraf/Arreguin) to suspend the rules and extend the meeting to 11:40 p.m.

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

**Action:** M/S/C (Wengraf/Arreguin) to suspend the rules and extend the meeting to 11:50 p.m.

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

**Public Testimony:** 4 speakers.

**Action:** M/S/C (Wengraf/Arreguin) to call the question on the pending motion.

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

## Action Calendar – Public Hearings

**Action:** M/S/Failed (Harrison/Davila) to refer to the Planning Commission to develop a medical overlay for the property.

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

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

1. Adopt Resolution No. 68,724–N.S. (General Plan)
2. Adopt first reading of Ordinance No. 7,638–N.S. (Zoning). Second reading scheduled for January 22, 2019.
3. Adopt Resolution No. 68,725–N.S. (CEQA)

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

## Action Calendar – Continued Business

- C. **Structure for City Council Standing Policy Committees** (*Continued from December 4, 2018. Item contains revised material.*)

**From:** City Manager

**Recommendation:** Adopt a Resolution approving the framework and procedures for standing policy committees of the City Council as part of the City's legislative process.

**Financial Implications:** See report

Contact: Dee Williams-Ridley, City Manager, 981-7000

**Action:** M/S/C (Arreguin/Wengraf) to accept revised material from Mayor Arreguin on Item C.

**Vote:** All Ayes.

**Action:** 2 speakers. M/S/Failed (Kesarwani/Wengraf) to adopt the policy as submitted at the meeting with the original policy committee groupings as proposed by the Agenda Committee.

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

**Action:** M/S/Carried (Hahn/Harrison) to adopt Resolution No. 68,726–N.S. with the Attachment 1, Exhibit A in the revised materials submitted by Mayor Arreguin at the meeting further amended to clarify the 120 day limit and adjust the policy committee groupings from the agenda committee as revised to move Climate Action Plan, Sustainability, and Energy and Water Conservation to the Facilities Committee.

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

## Action Calendar – Continued Business

- D. Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program** *(Continued from December 4, 2018.)*  
**From: Councilmembers Bartlett, Worthington, and Davila**  
**Recommendation:** That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.  
**Financial Implications:** Minimal  
 Contact: Ben Bartlett, Councilmember, District 3, 981-7130  
**Action:** Item D held over to January 22, 2019.
- E. Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations** *(Continued from December 4, 2018.)*  
**From: Councilmembers Davila and Harrison**  
**Recommendation:** Short-term Referral to the Planning Commission and Design Review Committee (DRC) to research and draft an Urban Forestry Ordinance requiring tree planting upon completion of new residential construction and certain alterations. The Planning Commission and DRC should consider the following:  
 -Establishing appropriate tree planting requirements, e.g. a ratio of trees required per square foot, for new single-family and multi-family construction, as well as qualifying alterations to existing residential buildings. -Establishing appropriate tree planting requirements for larger projects, including options to plant trees at alternative locations identified by the City and within the City limits. The developer should incur the cost of maintenance of the trees for a defined period of years after planting.  
 -Establishing appropriate California Natives species requirements. Refer to the California Native Plant Society for a list of eligible trees. <https://www.cnps.org/>  
**Financial Implications:** Unknown  
 Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Moved to Consent Calendar. Approved recommendation as revised in Supplemental Communications Packet #2 and written below.

*Six-month referral to the Planning Commission to research and draft an Urban Forestry Ordinance requiring tree planting upon completion of new construction, excluding single-family homes and ADUs, as well as construction in High Hazard Fire Zones. The Planning Commission should consider the following:*

- *Appropriate tree planting requirements for new construction, with the goal of increasing the tree canopy in Berkeley.*
- *Appropriate species requirements.*
- *Establishing a Tree Planting Fund to support increased tree planting throughout Berkeley.*

## Action Calendar – Continued Business

- Fa. Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties** *(Continued from December 4, 2018)*

**From: Community Environmental Advisory Commission**

**Recommendation:** Since the drought-storm-flooding cycle is predicted to get worse, refer to the City Manager to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period. The City Manager and staff should consider the following: - Comply beyond the State and Alameda County current requirements; -Encourage the treating and detaining of runoff up to approximately the 85th per-centile of water deposited in a 24-hour period; -Establish site design measures that include minimizing impervious surfaces; -Require homeowners to include flooding offsets in preparing properties for sale; - Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff; -Require abatements for newly paved areas over a specific size; -Make exceptions for properties that offer significantly below-market rent or sale prices; -Authorize a fee for all new construction or for title transfer to cover the cost of required compliance inspections. -Incorporate these measures for private property with similar measures for Public Works, while coordinating with EBMUD, BUSD, UCB and LBNL.

**Financial Implications:** See report

Contact: Viviana Garcia, Commission Secretary, 981-7460

- Fb. Companion Report to Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties** *(Continued from December 4, 2018)*

**From: City Manager**

**Recommendation:** Express appreciation for the intent of the Community Environmental Advisory Commission (CEAC) recommendation to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period, and allow staff to continue existing efforts to implement Municipal Regional Stormwater Permit regulations in coordination with the 14 other local governments and agencies that participate in the Alameda Countywide Clean Water Program.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Phillip Harrington, Public Works, 981-6300

**Action:** Items Fa and Fb held over to January 22, 2019.



## Council Action Items

**26. Referral to the City Manager to Update the Housing Pipeline Report to Address Timeline between Planning Entitlements and Submission of Building Permit Applications and Consider Reasons for Delay**

**From: Councilmember Harrison**

**Recommendation:** Referral to the City Manager to include in the Housing Pipeline Report an analysis of the time between planning entitlements and building permit requests for all projects of five units or greater over the past five years. On an ongoing basis, refer to the City Manager and Commission to propose changes to current Planning approval process to address the causes of delays between entitlements and building permits for construction or substantial rehabilitation of five or more dwelling units.

**Financial Implications:** Staff time

Contact: Kate Harrison, Councilmember, District 4, 981-7140

**Action:** Moved to Consent Calendar. Adopted recommendation as revised in Supplemental Communications Packet #2 to also refer the item to the Planning Commission.

**27. Single Use Disposable Foodware and Litter Reduction Ordinance**

**From: Councilmember Hahn and Mayor Arreguin**

**Recommendation:**

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to: a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”), to be launched by January 1, 2020 (six months before the date Reusable Foodware requirements become effective). b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing the Single Use Foodware Ordinance, on a free or sliding-scale fee basis, to be launched by July 1, 2019. c. Create a Reusable Takeout Foodware program for launch July 1, 2021, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste. d. Draft for approval amendments to the Single Use Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers. e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.
3. Refer to the City Manager to determine funding and staffing needs and sources of funds for each program/phase, and submit funding allocations or requests to the budget process.

**Financial Implications:** See report

Contact: Sophie Hahn, Councilmember, District 5, 981-7150

**Action:** Item 27 held over to January 22, 2019.

## Information Reports

**28. Referral Response: Study Possible Scenarios of the Loss of Federal Funds  
From: City Manager**

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

**Action:** Received and filed.

**29. Measure U1 Reporting**

**From: Housing Advisory Commission**

Contact: Amy Davidson, Commission Secretary, 981-5400

**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda - 1 speaker.**

## Adjournment

**Action:** M/S/C (Wengraf/Arreguin) to adjourn the meeting in memory of:

1. Julia Vinograd, Berkeley Poet

**Vote:** All Ayes.

Adjourned at 11:48 p.m.

This is to certify that the foregoing is a true and correct record of the regular meeting of December 11, 2018 as approved by the Berkeley City Council.

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Mark Numainville, City Clerk

## Communications

**Another Location for Apothecarium Dispensary**

1. Lauren Kerr
2. Paul Lundahl
3. Anthony Bonet

**East Bay Community Energy**

4. From the CEO's desk of EBCE

**Homeless Encampments to Vacate**

5. Diana Bohn

**UASI Committee Problem**

6. Bob Flasher

**Smart Kiosks**

- 7. Kathryn Stein
- 8. Carol Denney

**Supplemental Communications and Reports 1**

**Item #23: Short-term referral to City Attorney and Health Housing and Community Service to amend Berkeley Municipal Code 7,441-N.S. to expand the control of flavored tobacco across the City of Berkeley toward preventing youth and young adult tobacco use**

- 9. Supplemental material, submitted by Councilmember Davila

**Item #27: Single Use Disposable Foodware and Litter Reduction Ordinance**

- 10. Revised material, submitted by Councilmember Hahn

**Supplemental Communications and Reports 2**

**Item #1: Confirming the Results of the November 6, 2018, General Municipal Election**

- 11. Supplemental material, submitted by the City Clerk

**Item #20: Establishment of Traffic Circle Policy Task Force**

- 12. Supplemental material, submitted by Mayor Arreguin
- 13. Karl Reeh

**Item #21: Send a Letter to Sutter Health Requesting a Plan to Retrofit/Rebuild Alta Bates Hospital or sell to another operator**

- 14. Supplemental item, submitted by Mayor Arreguin

**Item #23: Short-term referral to City Attorney and Health Housing and Community Service to amend Berkeley Municipal Code 7,441-N.S. to expand the control of flavored tobacco across the City of Berkeley toward preventing youth and young adult tobacco use**

- 15. Liz Williams

**Item #B: Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review**

- 16. Patrick Sheahan, on behalf of the Zoning Adjustment Board

**Item #C: Structure for City Council Standing Policy Committees**

- 17. Supplemental material, submitted by Mayor Arreguin

**Item #D: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program**

- 18. Brian Auerbach
- 19. Susan Raeburn

**Item E: Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations**

20. Supplemental material, submitted by Councilmember Davila

**Item #Fa: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties**

21. Supplemental material, submitted by Mayor Arreguin

**Item #26: Referral to the City Manager to Update the Housing Pipeline Report to Address Timeline between Planning Entitlements and Submission of Building Permit Applications and Consider Reasons for Delay**

22. Revised material, submitted by Councilmember Harrison

**Item #27: Single Use Disposable Foodware and Litter Reduction Ordinance**

23. Revised material, submitted by Councilmember Hahn

24. Alison Piccoli, on behalf of the California Restaurant Association

25. Allen King, President of Excellent Packaging

26. Miriam Gordon

27. Sandra Curtis

28. Paula White

29. Monica Wilson

30. Mary Ann Brewin

31. Jon Corn

32. Mimi Mougovan

33. Katherine Pope

34. Anna Whitney

35. 16 similarly-worded letters, submitted by Jeff Shaddock, Natasha Ham, Vivienne Lam, Leah Redwood, Marilyn and Victor Ichioka, Caryn Graves, Diana Bohn, Natalie Nava, Serena Patel, Julia Sherman, Leslie Yin, Liam Will, Kylie Murdock, Claire Rausser, Den Paul Cortez, Sarah Abdesahian

36. 11 another similarly-worded letters, submitted by Betsy Bigelow-Teller, Tom Miller, Mary Ann Fredson, Ellen Hahn, Michael Wallman, Danny Wedding, Sandra Ludlow, Jacque Ensign, Jon Stewart, Sheila Jordan, Becky Grether

**Item #27: Single Use Disposable Foodware and Litter Reduction Ordinance**

37. 143 Communications submitted via Berkeley Considers, includes summary information.

**Supplemental Communications and Reports 3**

**Item #6: Contract No. 9111E Amendment: City Data Services to add a Housing Trust Fund Monitoring and Inspection Module**

38. Barbara Gilbert

**Item #20: Establishment of Traffic Circle Policy Task Force**

39. Nancy Carleton

40. John Steere, on behalf of Berkley Partners for Parks

**Item #21: Send a Letter to Sutter Health Requesting a Plan to Retrofit/Rebuild Alta Bates Hospital or sell to another operator**

41. Sharon Singer

42. Nancy Lemon

43. Andrew Johnson, on behalf of the Bateman Neighborhood Association

44. Andy Katz

**Item #23: Short-term referral to City Attorney and Health Housing and Community Service to amend Berkeley Municipal Code 7,441-N.S. to expand the control of flavored tobacco across the City of Berkeley toward preventing youth and young adult tobacco use**

45. Cassie Ray, on behalf of the American Cancer Society

46. Holly Schneider

**Item #B: Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review**

47. Patrick Sheahan, on behalf of the Zoning Adjustment Board

48. Chris Barlow, on behalf of Wareham Development

**Item #C: Structure for City Council Standing Policy Committees**

49. Supplemental Material, submitted by Mayor Arreguin

**Item #D: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program**

50. Charles Pappas

51. Lynn Silver

52. Amanda Naprawa

**Item #27: Single Use Disposable Foodware and Litter Reduction Ordinance**

53. Juliet Lamont and Phil Price

54. Bonnie Borucki

55. Shirley Dean

56. Amir Wright

57. Melissa Romero

58. Angie Chen

59. John Paluska (2)

60. Ashely Coneff, on behalf of Dunkin Donuts

61. Aladdin Dino Sammakieh, McDonald's Owner/Operator

62. Liv Johansson

63. Monica Wilson, on behalf of GAIA

64. Eight similarly-worded letters, submitted by Claire Perrin, Ayako Nagano, Mark Green, Sarah Bancroft, Dante Gonzales, Nuha Khalfay, Kelia Hai Liang, Roxana Horowitz

65. Six similarly-worded letters, submitted by Diana Bohn, Nuha Khalfay, Ayako Nagano, Bonnie Borucki, Greenpeace, Sandra Curtis

**Leonard Powell's Home**

66. Friends of Adeline (2)

**Memories of the 60's, by Julia Vinograd**

67. Unknown



Office of the City Manager

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 22, 2019

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is \$9,078,600.

| <u>PROJECT</u>                                                     | <u>Fund</u> | <u>Source</u>            | <u>Amount</u> |
|--------------------------------------------------------------------|-------------|--------------------------|---------------|
| Implementation plan for civic center park and adjustment buildings | 511         | Measure T1               | \$300,000     |
| On-call traffic engineering services                               | 127         | State Transportation Tax | \$2,000,000   |
|                                                                    | 134         | Measure BB               |               |
|                                                                    | 501         | Capital Improvement      |               |
| Food services for summer lunch program                             | 319         | Youth Lunch              | \$325,000     |
| External Evaluator                                                 | 157         | Tobacco Control          | \$93,600      |
| Berkeley Rose Garden Pergola Reconstruction and Site Improvements  | 138         | Parks Tax                | \$2,000,000   |
|                                                                    | 511         | Measure T1               |               |

Formal Bid Solicitations and Request for Proposals  
 Scheduled for Possible Issuance After Council  
 Approval on January 22, 2019

CONSENT CALENDAR  
 January 22, 2019

|                                                   |     |              |                    |
|---------------------------------------------------|-----|--------------|--------------------|
| Community-Based Organizations Funding Opportunity | 011 | General Fund | \$4,360,000        |
| <b>Total:</b>                                     |     |              | <b>\$9,078,600</b> |

CURRENT SITUATION AND ITS EFFECTS

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

BACKGROUND

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

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Shari Hamilton, General Services Manager, Finance, 510-981-7329

Attachments:

- 1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on January 22, 2010

Sanitary Sewer Rehabilitation:

- a) Implementation plan for Civic Center Park and Adjustment Buildings
- b) On-Call Traffic Engineering Services
- c) Food Services for Summer Lunch Program
- d) External Evaluator
- e) Berkeley Rose Garden Pergola Reconstruction and Site Improvement
- f) Community-Based Organizations Funding Opportunity

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



DATE SUBMITTED: January 22, 2019

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                  | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                     | ESTIMATED COST                                                         | BUDGET CODE TO BE CHARGED                                                                                                                                                                                                             | DEPT. / DIVISION                            | CONTACT NAME & PHONE           |
|-------------------|------------------------------------------------------------------|----------------------|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|--------------------------------|
| 19-11286-C        | Implementation Plan for Civic Center Park and Adjacent Buildings | 3/6/2019             | 4/3/2019                 | Retain a vendor to lead a transparent public process on the implementation plan for the retrofit and reuse of Veteran's Memorial Building, Old City Hall, and Civic Center Park. | \$300,000                                                              | T-1 Bond<br><br>511-21-208-251-0000-000-446-612990-<br><br>The funding will be appropriated as part of the Second Amendment to the FY 2019 Annual Appropriations Ordinance.                                                           | CMO/OED                                     | Eleanor Hollander<br>981-7536  |
| 19-11289-C        | On-Call Traffic Engineering Services                             | 1/23/2019            | 2/21/2019                | Under direct supervision of City traffic engineering staff, consultant will provide on-call municipal traffic engineering services to the City.                                  | FY19-FY21<br><br>Total of three (3) years<br><br>Total NTE \$2,000,000 | Potential budget codes to be charged:<br><br>127-54-622-668-0000-000-431-612310-<br>134-54-622-668-0000-000-431-612240-<br>501-54-622-668-0000-000-431-612310-<br><br>No costs will be incurred until applicable City Projects emerge | Transportation/<br>Traffic Engineering      | Hamid Mostowfi<br>981-6403     |
| 19-11290-C        | Food Services for Summer Lunch Program                           | 1/24/2019            | 2/21/2019                | The City of Berkeley is soliciting proposals from qualified firms or individuals to prepare and deliver lunches and snacks for the Summer Lunch Program, beginning 2019.         | \$65,000 per year;<br>5-year total:<br>\$325,000                       | FUND\$: 080-5964-450-55-50;<br><br>ERMA:<br>319-52-543-570-1004-000-461-644110-<br><br>Funding for first year available in this budget code. Additional amounts to be appropriated in future years.                                   | Parks Recreation &<br>Waterfront Department | Christina Erickson<br>981-6703 |

DATE SUBMITTED: January 22, 2019

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                   | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | ESTIMATED COST                                                     | BUDGET CODE TO BE CHARGED                                                                                                                     | DEPT. / DIVISION                                 | CONTACT NAME & PHONE                                |
|-------------------|-------------------------------------------------------------------|----------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|-----------------------------------------------------|
| 19-11292-C        | External Evaluator                                                | 1/23/2019            | 2/21/2019                | In partnership with the California Department of Public Health as Local Lead Agency, the City of Berkeley is required to hire an External Evaluator (EE) from outside of the agency who fulfills the requirements of the Local Program Evaluator (LPE). The EE provides an outside, unbiased, and objective point-of-view; therefore, the EE must be completely separate from the health department or agency that performs tobacco control interventions. The EE is generally responsible for designing the evaluation plan and providing consultation on the entire scope of work; developing data collection instruments, protocols, and methodology; analyzing data; and preparing evaluation reports. | \$93,600.00<br>(FY19-\$31,200;<br>FY20-\$31,200;<br>FY21-\$31,200) | HHPLLA1901/<br>NONPERSONNEL/<br>CONTRSERVI/<br>CNSLTNTS<br>NONPERSONN<br>CONTRSERVI<br>CNSLTNTS<br><br>157-51-506-559-2053-<br>000-451-612990 | HHCS/PH                                          | Rebecca Day-Rodriguez,<br>981-5337                  |
| 19-11294-C        | Berkeley Rose Garden Pergola Reconstruction and Site Improvements | 1/23/2019            | 5/27/2019                | Reconstruction of Historic Redwood Pergola, pathway reconstruction, ADA improvements, and other miscellaneous site and utility improvements.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | \$2,000,000                                                        | 138-52-545-000-0000-<br>000-461-663110-<br>PRWT119012<br><br>511-52-545-000-0000-<br>000-461-663110-<br>PRWT119012                            | Parks, Recreation & Waterfront, Capital Projects | Evelyn Chan<br>981-6430<br>Scott Ferris<br>981-6700 |

DATE SUBMITTED: January 22, 2019

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED     | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                                                                                                          | ESTIMATED COST                                                        | BUDGET CODE TO BE CHARGED          | DEPT. / DIVISION | CONTACT NAME & PHONE       |
|--------------------|-----------------------------------------------------|----------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|------------------------------------|------------------|----------------------------|
| 19-11295-C         | Community-Based Organizations Funding Opportunities | 1/23/2019            | 2/27/2019                | <p>To release a Request For Proposals (RFP) for a two-year grant opportunity for BUSD and community-based organizations consistent with SSBPPE's goals to reduce the consumption of SSBs and to address the effects of SSB consumption.</p> <p>Council Report from SSBPPE Commission slated to be on the 01/22/2019 Council Agenda.</p> <p>Council Resolution No. _____ (pending Council approval on 01/22/2018).</p> | Up to \$4,360,000 million over two years subject to Council approval. | 011-51-507-507-0000-000-459-636110 | HHCS/PHD         | Dechen Tsering<br>981-5394 |
| <b>DEPT. TOTAL</b> |                                                     |                      |                          |                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>\$9,078,600</b>                                                    |                                    |                  |                            |
| <b>GRAND TOTAL</b> |                                                     |                      |                          |                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>\$9,078,600</b>                                                    |                                    |                  |                            |





Office of the City Manager

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kelly Wallace, Interim Director, HHCS  
 Subject: Authorize Memorandum of Understanding with Alameda County for Winter Relief Program

RECOMMENDATION

Authorize the City Manager to enter into a Memorandum of Understanding (MOU) through April 30, 2019 with Alameda County for a Winter Relief Program.

FISCAL IMPACTS OF RECOMMENDATION

Alameda County will provide the City of Berkeley \$22,500 to pay for all services associated with the Winter Relief Program. The funds will be deposited and expensed from the One-Time Grant: No Capital Expenditures Fund and will be officially appropriated as part of the Second Amendment to the FY 2019 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

During the typically cold, rainy winter months, unsheltered homeless individuals experience increased vulnerability and the potential for further physical and psychological decompensation. Providing these individuals short-term shelter in local motels not only protects them from the elements, but can also create the opportunity to engage them in services to help stabilize their lives. Alameda County will provide funding to the Mental Health Division to pay for motel stays for high-need, long-term unsheltered homeless individuals outreached or referred to the Homeless Outreach & Treatment Team (HOTT). The length of stay for each participant will be based on their needs and the availability of other appropriate shelter options, but shall not exceed 29 days.

BACKGROUND

The Housing & Community Services Division of HHCS administered a similar program with funding from Alameda County during last fiscal year.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

High-need long-term homeless individuals currently living on the streets are amongst the most vulnerable populations in Berkeley, and are also among the most difficult to serve. Providing this program will not only get them in out of the cold, but will also create an opportunity to get them engaged in services to improve their situation for the long term.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

Steven Grolnic-McClurg, Division Manager, Mental Health, 510-981-5249

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

AUTHORIZE MEMORANDUM OF UNDERSTANDING WITH ALAMEDA COUNTY  
FOR WINTER RELIEF PROGRAM

WHEREAS, on January 23, 2018 the Council of the City of Berkeley adopted Resolution No. 68,288-N.S. to enter into a previous Memorandum of Understanding with the County of Alameda for a Winter Relief Program during the period of December 1, 2017 through March 31, 2018; and

WHEREAS, the County of Alameda ("COUNTY") has allocated a total of \$22,500 for respite from the elements for literally homeless people living on the streets of Berkeley during the period of November 1, 2018 through April 30, 2019; and

WHEREAS, the parties acknowledge that there is a lack of available shelter space to provide shelter for the homeless populations of Berkeley, Albany, and Emeryville; and

WHEREAS, the County and the City of Berkeley further acknowledge that funding for motel stays for unsheltered homeless individuals during the typically cold and rainy winter season will improve health and safety outcomes for residents who would otherwise remain unsheltered during inclement weather; and

WHEREAS, the City's Homeless Outreach and Treatment Team (HOTT) staff will utilize these funds and place high need and vulnerable homeless people in temporary lodging, allowing them a respite from the streets while support services staff assess needs and develop a long-term housing plan.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to receive funds and negotiate and execute a memorandum of understanding (MOU) through April 30, 2019 with the County of Alameda that outlines the services to be provided and the responsibilities of the County and the City in the Winter Relief Program. A record contract of said MOU and any amendments are on file with the Office of the City Clerk.







Office of the City Manager

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing and Community Services Department

Subject: Revenue Contract: Community Services Block Grant for Calendar Year 2019

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to accept the Community Services Block Grant (CSBG) Contract Number 19F-4001 for the amount of \$266,863 to provide services for low-income people for the period January 1, 2019 to December 31, 2019.

FISCAL IMPACTS OF RECOMMENDATION

Berkeley's Community Services Block Grant (CSBG) allocation for the period January 1, 2019 through December 31, 2019 is \$266,863 (Community Action Program Fund - 334-51-504-530-0000-000-000-431110-). The CSBG allocation amount is included in the City's anti-poverty Community Action Fund and supports oversight and management of anti-poverty funds within the Health, Housing and Community Services Department.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley is a Community Action Agency (CAA) and therefore receives Community Services Block Grant funds (CSBG) to support anti-poverty programs. CSBG funds are part of the federal Department of Health and Human Services budget passed through the state to local CAAs. Historically, the City of Berkeley has awarded Community Services Block Grant funds to community service programs.

The Human Welfare and Community Action Commission (HWCAC) acts as the tri-partite advisory Board for CSBG funding. As such, it is responsible for reviewing performance of funded programs, reviewing compliance with the implementation of the community action program, providing public participation in the administration of the CSBG funds and advising Council on CSBG funding decisions. CSBG funds complement anti-poverty General Funds which are used for other critical community services, including disability and senior services, medical care, child care and additional homeless services. The Berkeley City Council is responsible for all final CSBG funding decisions.

At its November 28, 2018 meeting, the Human Welfare and Community Action Commission (HWCAC) passed a motion to recommend that the City accept the CSBG Funds and contract for 2019. (M/S/C: Sood/Dunner. Ayes: – Sood, Dunner, Kohn, Omodele. Noes: None. Abstain: None. Absent: Whitson, Holman, Vrankovecki (Excused).

#### BACKGROUND

Community Services Block Grant (CSBG) supports the City of Berkeley's anti-poverty efforts at a minimum funded level. The City received \$160,000 until December of 2005. In 2006 the award for minimum-funded agencies was increased to \$173,556. In 2008, the award for minimum-funded agencies increased to \$259,646 annually; in 2013 the award was reduced to \$244,908. In 2016 and 2017, the annual award was increased to \$265,577.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

The Community Services Block Grant is necessary to support the provision of services for residents living in poverty in Berkeley.

#### ALTERNATIVE ACTIONS CONSIDERED

Rejecting CSBG funding would reduce funding for services to low-income Berkeley residents and HHCS staffing. This would negatively impact low-income services in Berkeley.

#### CONTACT PERSON

Mary-Claire Katz, Associate Management Analyst, Health, Housing & Community Services Department, (510) 981-5414

Attachments:

1: Resolution

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

REVENUE CONTRACT: 2019 COMMUNITY SERVICES BLOCK GRANT (CSBG)

WHEREAS, the City of Berkeley is a Community Action Agency and receives CSBG funds as the Berkeley Community Action Agency to support anti-poverty programs; and

WHEREAS, the Human Welfare and Community Action Commission (HWCAC) acts as an advisory tri-partite Board to the Council providing public participation in the governing process; and

WHEREAS, at the November 28, 2018 HWCAC meeting a motion was passed recommending that the City accept the Community Service Block Grant Funds; and

WHEREAS, this CSBG revenue contract covers the calendar year 2019 (January 1, 2019 through December 31, 2019) for a contract amount of \$266,863 (351-7902-331-1012); and

WHEREAS, the funds have historically been used to support anti-poverty services and to support City of Berkeley oversight and management of anti-poverty programs (budget code (334-51-504-530-0000-000-444-Various to 334-51-504-535-0000-000-444-Various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to accept Community Service Block Grant Contract Number 19F-4001 for the amount of \$266,863, and execute any resultant agreements and amendments including amendments that may increase the contract amount to provide low-income services for the time period January 1, 2019 to December 31, 2019. A record signature copy of said agreement and any amendments shall be on file in the office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services  
 Subject: Revenue Grant Agreement: Medi-Cal Administrative Activities Funding from the State of California to Conduct Public Health Promotion Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to submit grant agreements to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion for Medi-Cal Administrative Activities (MAA) Program for an amount not to exceed \$3,000,000 for period of the agreement, Fiscal Years 2020 through 2022.

FISCAL IMPACTS OF RECOMMENDATION

The MAA program reimburses a portion of the City's public expenditure that supports Medi-Cal-related activities. This funding can be up to \$1,000,000 per year for three years for the Public Health Division, the Aging Services Division and the HHCS Office of the Director together. The precise amount of revenue the City earns is determined by the City's level of match funding, program staff time-studies, and level of eligible services. The revenue and expense for this contract will be tracked in Targeted Case Management/Linkages fund in the Aging Services, Public Health and Office of the Director Divisions within the HHCS department.

Spending of all referenced grant funds is subject to Council approval of the budget for each fiscal year and the Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

The Health, Housing & Community Services Department provides a broad range of public health and community health services to the community, with the goals of promoting healthy environments and behaviors, protecting residents from disease, and preventing illness, disability, and premature death. Funding through Medi-Cal Administrative Activities supports this work by supporting program efforts to enroll community members into Medi-Cal and assist their access to Medi-Cal services.

BACKGROUND

The City of Berkeley receives funding from many sources annually to complete work related to improving the health of the community. As a local health jurisdiction, the City

is entitled to specific State funding to meet core public health objectives. The Division is committed to providing essential services to the community to prevent the spread of disease and to promote healthy environments.

The State establishes funding caps for the MAA program, with actual revenue determined by City matching funds and service delivery. Revenue projections are based on recent year actual revenues in these programs, service-delivery staffing, eligible client populations, and available matching funds. These projections will enable the Department to keep expenditures within actual revenues, by budgeting expenditures to realistic revenue projections.

Medi-Cal Administrative Activities (MAA) Program provides administrative activities that directly support efforts to identify and enroll potentially eligible persons into Medi-Cal in the Public Health and Aging Services Divisions.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental impacts with this agreement.

RATIONALE FOR RECOMMENDATION

These funds support vital services related to our mandates as a public health jurisdiction and local initiatives designed to improve the health of Berkeley residents. These non-competitive grants support the Department's mission and provide the City with funding to continue working to protect and improve the health of the community.

ALTERNATIVE ACTIONS CONSIDERED

This funding is essential for the Department's mission and goals. The Health, Housing and Community Services Department assesses each funding source to ensure that it supports the City's mission and goals. The alternative action of not seeking any of these funding sources would result in a significant reduction in public health services to the community.

CONTACT PERSON

Leah Talley, Interim Deputy Director, Health, Housing & Community Services, 981-5420

Attachments:

1. Resolution: Medi-Cal Administrative Activities program

RESOLUTION NO. -N.S.

GRANT AGREEMENT: STATE OF CALIFORNIA FOR THE MEDI-CAL  
ADMINISTRATIVE ACTIVITIES PROGRAM

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services is committed to identification and enrollment of potentially eligible persons into Medi-Cal; and

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services provides a broad range of needed public and community health services to the community; and

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services works to promote healthy environments and behaviors, protect residents from disease, and prevent illness, disability, and premature death; and

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services seeks to eliminate health inequities; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital health services.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit grant agreements to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion for Medi-Cal Administrative Activities (MAA) Program for an amount not to exceed \$3,000,000 for period of the agreement, Fiscal Years 2020 through 2022. The revenue and expense for this contract will be tracked in Targeted Case Management/Linkages fund in the Aging Services, Public Health and Office of the Director Divisions within the HHCS department. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.







Office of the City Manager

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Director, Health, Housing & Community Services  
Phillip L. Harrington, Director, Public Works

Subject: Grant Application: California Affordable Housing and Sustainable Communities Infrastructure and Agreements in Connection with Proposed Berkeley Way Project

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to negotiate, enter into and cause the City to perform its obligations under one or more agreements (including amendments) with the BRIDGE Housing Corporation, Berkeley Food and Housing Project (BFHP), and/or their affiliates (including BRIDGE Berkeley Way LP and BFHP Hope Center LP), relating to a grant application to the California Affordable Housing and Sustainable Communities (AHSC) Program for Berkeley Way project-related transportation and infrastructure improvements, for a total amount up to \$3,800,000 for City-projects, and to accept and perform the grant if awarded.

FISCAL IMPACTS OF RECOMMENDATION

The project team will also apply directly to the state for about \$14M for housing development from the same source. That segment of the application does not require City participation, and housing funds will be loaned directly to the project without passing through the City. The housing portion of the application cannot go forward without the transportation and infrastructure portion discussed in this report.

If awarded, this AHSC application would bring up to \$3,800,000 of competitive grant revenue to the Fund 344 for bicycle and pedestrian improvements that were previously identified in City plans. The resolution authorizes the City Manager to enter into agreements that will allow the project sponsors to pass through the funds to the City if their application is successful.

The grant program requires that each project be 90% funded between the AHSC grant funds and funds already committed. Based on current project cost estimates, the projects would be 100% funded between the AHSC grant funds and funding already committed.

If the AHSC grant application is successful, the City will need to complete the agreed projects within three years of the grant award. The resulting City agreements are expected to include generally customary provisions requiring the City (i) to complete the agreed improvements by the deadline, (ii) to be responsible for any funding shortfalls, (iii) to not seek reimbursement for any grant amounts not otherwise spent on the projects, and (iv) to be responsible for certain damages suffered by other Berkeley Way project parties (including the project sponsors, lenders and AHSC) caused by any City breach or default, including completion delays.

#### CURRENT SITUATION AND ITS EFFECTS

BRIDGE and BFHP proposed to apply for AHSC funds for the proposed Berkeley Way project. On March 13, 2018, Council directed staff to prioritize all actions needed to meet AHSC deadlines. In order for the project to be eligible for about \$14M in housing development funds, the application also needs to include about \$6M in transportation and infrastructure improvements consistent with a complex system of priorities, for a total funding request of about \$20M.

The Berkeley Way project team, City staff, BART staff, and AC Transit staff have met multiple times over the past year to identify a total of \$6M of transportation and infrastructure projects meeting the applicable criteria. City participation will not be required for the BART and AC Transit projects. The full \$6M of proposed transportation and infrastructure improvements are:

- \$900,000 for BART to purchase and install bike lockers at the North Berkeley BART station and to install a cycletrack at the station. These are part of BART's larger station area improvement project which includes Ohlone Greenway crossing improvements and a Delaware Street protected bikeway, which were identified in the City's Bicycle Plan. BART will enter into one or more separate agreements with the Berkeley Way project sponsors to apply for and receive these funds, and deliver the improvements.
- \$1.3M for AC Transit to purchase new zero-emissions buses for use on the F line through Berkeley as part of the Transbay Tomorrow improvements. AC Transit will also enter into one or more separate agreements with the Berkeley Way project sponsors to apply for and receive these funds, and deliver the improvements.
- \$3.8M for City projects identified below.

The following table shows two alternatives for the \$3.8M in proposed City projects:

| <b><i>City Transportation Projects (if the Milvia Bikeway project does not receive an Active Transportation Program (ATP) grant in January 2019)</i></b> | <b>AHSC Funds Requested</b> | <b>Current City Cost Estimates</b> | <b>Amounts of Remaining Identified Funds</b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|------------------------------------|----------------------------------------------|
| Milvia Bikeway – Hearst to Allston (source: 2017 Bicycle Plan)                                                                                           | \$2,264,000                 | \$2,659,000                        | \$395,000*                                   |
| Addison Bike Boulevard – Sacramento Street to Martin Luther King, Jr. Way (source: 2017 Bicycle Plan)                                                    | \$775,000                   | \$ 775,000                         | \$0                                          |
| University Avenue Transit Priority Street – sidewalk bulbouts with bus stops at Grant & Sacramento St. (source: Pedestrian Master Plan)                  | \$600,000                   | \$ 600,000                         | \$0                                          |
| Southside Complete Streets project – matching funds for already-acquired \$7M federal grant (source: Berkeley Strategic Transportation Plan)             | \$161,000                   | \$8,043,602                        | \$7,882,602**                                |
| Total                                                                                                                                                    | \$3,800,000                 | \$12,077,602                       | \$8,277,602                                  |
| <b><i>Alternative City Projects (if the Milvia Bikeway project does receive an Active Transportation Program (ATP) grant in January 2019)</i></b>        | <b>AHSC Funds Requested</b> | <b>Current City Cost Estimates</b> | <b>Amounts of Remaining Identified Funds</b> |
| Shattuck intersection pedestrian safety treatments and bus stop bulbouts – Berkeley Way to Vine Street (source: Pedestrian Master Plan)                  | \$2,890,000                 | \$2,890,000                        | \$0                                          |
| Addison Bike Boulevard – Sacramento Street to Martin Luther King, Jr. Way (source: 2017 Bicycle Plan)                                                    | \$775,000                   | \$ 775,000                         | \$0                                          |
| Southside Complete Streets project – matching funds for already-acquired \$7.1M federal grant (source: Berkeley Strategic Transportation Plan)           | \$135,000                   | \$8,043,602                        | \$7,908,602**                                |
| Total                                                                                                                                                    | \$3,800,000                 | \$11,708,602                       | \$7,908,602                                  |

\*\$350,000 from a grant from the Alameda County Transportation Commission for preliminary engineering and the environmental study using Alameda County Measure B Discretionary Bicycle and Pedestrian Program funding; \$45,000 from the City's Direct Local Distribution funding from the Alameda County Measure BB Bicycle and Pedestrian Program.

\*\* \$7.121M from a federal grant; the remainder of the funding has been identified and programmed from University of California Long-Range Development Plan (UC LRDP) settlement agreement funding.

All required actions under the California Environmental Quality Act (CEQA) and, with respect to the projects receiving federal funding, the National Environmental Policy Act (NEPA) will be taken. At this time, there is no known opposition to any of the proposed City projects. Since all of them have been generally known for some time, the City would generally have already learned of any opposition. Staff is not aware of any other reason why CEQA and NEPA approvals would not be timely obtained. While there are no guarantees, City staff therefore understands the City will timely receive all required CEQA and NEPA approvals.

The attached resolution would allow the City Manager to negotiate and execute one or more agreements with the BRIDGE Housing Corporation, Berkeley Food and Housing Project (BFHP), and their affiliates (including BRIDGE Berkeley Way LP and BFHP Hope Center LP) agreeing to accept grant funds and complete the proposed City projects if the funds are awarded. As required by AHSC rules, it would also enable the transportation and infrastructure portion of the Berkeley Way funding application to rely on the City's extensive experience with similar projects, without requiring the City to act as a co-applicant for the entire AHSC project grant application. Under the attached resolution, direct agreements between the City and other Berkeley Way project parties (such as lenders) would require separate Council approval.

#### BACKGROUND

Administered by the Strategic Growth Council and implemented by the Department of Housing and Community Development (HCD), the AHSC Program funds land-use, housing, transportation, and land preservation projects to support infill and compact development that reduce greenhouse gas ("GHG") emissions. Funding for the AHSC Program is provided from the Greenhouse Gas Reduction Fund (GGRF), an account established to receive Cap-and-Trade auction proceeds.

To assist with the application, BRIDGE hired Enterprise, which worked with 15 of the 25 AHSC applications funded in 2017. Enterprise is providing technical assistance on developing a competitive application for the Berkeley Way project. Enterprise advises that to be competitive the application needs to include:

- Two miles of bike lanes that connect to key destinations and/or close key network gaps, or two miles of streets with new sidewalk or pedestrian crossing improvements at sequential intersections, or a combination of both;
- Sustainable Transportation Infrastructure (STIs) such as transit, bike lanes, sidewalks, and crosswalks; and
- Transportation-Related Amenities (TRAs) such as bike parking, repair kiosks, and bus shelters. The BART bike lockers and bus bulbouts satisfy this category.
- Significant reductions to greenhouse gases as measured on a quantitative tool. AC Transit's buses are an important component to this part of the application.

Enterprise has indicated its belief that the proposed BART, AC Transit and City projects above should satisfy these criteria.

### ENVIRONMENTAL SUSTAINABILITY

The purpose of the AHSC program is to reduce greenhouse gas emissions in California, and all of the projects identified for the funding will help accomplish that goal. Increasing cycling and walking would help the City achieve the Berkeley Climate Action Plan greenhouse gas emission reduction targets of 33% below year 2000 levels by the year 2020, and 80% below year 2000 levels by 2050. The Climate Action Plan states that, in order to meet these targets, "Transportation modes such as public transit, walking and bicycling must become the primary means of fulfilling our mobility needs."

### RATIONALE FOR RECOMMENDATION

The City transportation and infrastructure projects proposed for inclusion in this AHSC funding application were all previously identified in existing City plans, including the City's Bicycle Plan, Pedestrian Plan, and Berkeley Strategic Transportation Plan. This grant opportunity has the potential to provide up to a total of \$3.8M directly to the City, and another \$2.2M to BART and AC Transit, for bicycle, pedestrian and transit improvements in Berkeley at the same time that the program provides funding for affordable housing in the proposed Berkeley Way project. If the grant application is successful, staff believes that the City will need only the already-committed funds from the UC Long-Range Development Plan Settlement Agreement of not more than \$787,602 for the City to complete its required transportation and infrastructure improvements, based on current cost estimates, already budgeted City funds and already awarded federal funds. Nevertheless, if this turns out to be incorrect, the City will be required to make up any shortfalls from other sources.

Accepting this AHSC grant, like almost all funding grants, comes with some risks. Nevertheless, City staff believes that the City can reasonably bear these risks in light of (i) the understanding that all of the anticipated costs have already been identified or budgeted, (ii) the expectation that all CEQA and NEPA approvals will be timely received, (iii) the City's general extensive experience with executing similar transportation and infrastructure projects, and specific understandings that all of the projects at issue can be completed within the required three-year period, and (iv) other than customary requirements for carrying out any public works project, staff is not aware of any other significant pre-conditions or risks for the City executing the projects.

Specific design, construction, procurement and related contracts to deliver the City projects will be subject to customary City approvals at the appropriate times, including Council approval when otherwise required.

### ALTERNATIVE ACTIONS CONSIDERED

Staff have not identified an alternative action that is consistent with Council's March 13, 2018 direction to prioritize all actions needed to meet AHSC deadlines.

### CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5406

Beth Thomas, Principal Planner, Public Works, (510) 981-7068

Attachments:

1: Resolution

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

CALIFORNIA AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES  
INFRASTRUCTURE GRANT APPLICATION AND AGREEMENT WITH PROPOSED  
BERKELEY WAY PROJECT

WHEREAS, Milvia Bikeway and the Addison Bike Boulevard were identified in the Berkeley Bicycle Plan (2017); and

WHEREAS, Shattuck intersection treatments from Berkeley Way to Vine Street and sidewalk bulbouts at the University Avenue intersections with Grant and Sacramento Streets were identified in the Berkeley Pedestrian Master Plan; and

WHEREAS, the Southside Complete Streets project was identified in the Berkeley Strategic Transportation Plan; and

WHEREAS, City General Plan Policy T-2 calls on the City to “implement improvements to make transit more convenient, dependable, and attractive” and Policy T-4 establishes the City’s Transit-First Policy concerning identified Primary and Secondary Transit Routes; and

WHEREAS, Shattuck Avenue and University Avenue are identified in the City General Plan as Primary Transit Routes; and

WHEREAS, the Milvia Bikeway, Addison Bike Boulevard, University Avenue Transit Priority Street and Southside Complete Streets project are referred to as the “City Transportation Projects,” and the Shattuck intersection treatments and sidewalk bulbouts, Addison Bike Boulevard and Southside Complete Streets project are referred to as the “Alternative City Projects;” and

WHEREAS, the City selected the BRIDGE Housing Corporation and the Berkeley Food and Housing Project acting in partnership to develop the City-owned site at 2012 Berkeley Way into affordable housing, permanent supportive housing, temporary housing and shelter for the homeless and homeless service space, and entered into a Disposition and Development Agreement dated June 8, 2016, as amended, relating to the proposed development of the site; and

WHEREAS, the City Transportation Projects and Alternative City Projects are all related to the proposed Berkeley Way project; and

WHEREAS, the BRIDGE Housing Corporation and the Berkeley Food and Housing Project, and/or their affiliates (including BRIDGE Berkeley Way LP and BFHP Hope Center LP), propose to apply for California Affordable Housing and Sustainable Communities (AHSC) funding for about \$20M in housing, transportation and infrastructure improvements in February 2019 which, if the application is successful, would result in up to approximately \$3.8M required to be passed through to the City to deliver either the City

January 22, 2019

Transportation Projects (if the Milvia Bikeway project does not receive an Active Transportation Program (ATP) grant in January 2019) or the Alternative City Projects (if the Milvia Bikeway project does receive an ATP grant in January 2019); and

WHEREAS, the Council of the City of Berkeley on March 13, 2018 directed staff to prioritize all actions needed to meet AHSC deadlines.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to negotiate, enter into and cause the City to perform its obligations under one or more agreements (including amendments) with the BRIDGE Housing Corporation, Berkeley Food and Housing Project (BFHP), and their affiliates (including BRIDGE Berkeley Way LP and BFHP Hope Center LP), relating to a grant application to the California Affordable Housing and Sustainable Communities (AHSC) program for Berkeley Way project-related transportation and infrastructure improvements, for a total amount up to \$3,800,000 for City-projects, and to accept and perform the grant if awarded.





Office of the City Manager

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Classification and Salary: Public Works Maintenance Superintendent and Equipment Superintendent

RECOMMENDATION

Adopt a Resolution amending Resolution No. 68,710-N.S. Classification and Salary Resolution for Public Employees Union - Local One, to increase the salary range for Public Works Maintenance Superintendent and Equipment Superintendent, 6.3% and 6.0% respectively, to an hourly salary range of \$55.7482 - \$67.3564 effective January 22, 2019.

CURRENT SITUATION AND ITS EFFECTS

The Superintendent classifications in the City have three pay ranges. The Equipment Superintendent pay range is \$52.6173-\$63.5814; the Public Works Maintenance Superintendent salary pay range is \$52.4689-\$63.3265; the Parks Superintendent and the Facilities Maintenance Superintendent classification pay ranges are \$55.7482-\$67.3564.

The current Equipment Maintenance Division is comprised of two (2) sections: Corporation Yard and Transfer Station. The Division reporting structure consists of: one (1) Equipment Superintendent, one (1) Senior Equipment Supervisor, two (2) Mechanic Supervisors, one (1) Lead Mechanic, eight (8) Mechanics, five (5) Service Technicians, and one (1) Welder Mechanic. The Division is also responsible for all fleet replacements and new-to-fleet purchases.

The current Public Works Maintenance Division is comprised of three (3) sections: Sewers/Clean Cities Operations, Parking Meter Maintenance/Collection, Street/Stormwater Maintenance, and Traffic Maintenance. The Division reporting structure consists of one (1) Superintendent, two (2) Senior Supervisors, sixteen (16) Supervisors, one (1) Equipment Operator, fifteen (15) Skilled Laborers, twenty one (21) Laborers, six (6) Parking Meter Maintenance Workers, five (5) Parking Meter Mechanics, three (3) Traffic Maintenance Worker I, two (2) Traffic Maintenance Worker II, one (1) Construction Equipment Operator, two (2) Concrete Finishers, and one (1) Concrete Equipment Operator.

The current Parks Division is comprised of three (3) sections: Urban Forestry, Landscape Operations and Building Maintenance. The Division reporting structure consists of: one (1) Superintendent, three (3) Senior Supervisors, six (6) Supervisors, one (1) Forestry Technician, three (3) Senior Forestry Climbers, four (4) Forestry Climbers, three (3) Sr. Landscape Gardeners, fifteen (15) Gardeners, four (4) Landscape Equipment Operators, one (1) Rosarian, one (1) Senior Groundskeeper, one (1) Management Analyst, nine (9) Building Maintenance Mechanics, and one (1) Office Specialist.

The current Facilities Maintenance Division is comprised of three (3) sections: Electrical, Building Maintenance and Janitorial. The Division reporting structure consists of: one (1) Superintendent, two (2) Senior Supervisors, two (2) Supervisors, three (3) Lead Electricians, seven (7) Electricians, one (1) Lead Communication Technician, three (3) Communication Technicians, five (5) Building Maintenance Mechanics, seven (7) Janitors, one (1) Electrical Parts Technician, and one (1) Warehouse Operations Specialist.

The Parks Superintendent and Facilities Maintenance Superintendent Classifications share the same pay range which is higher than the Public Works Maintenance Superintendent and Equipment Superintendent Classification ranges. **Increasing the salary range for Public Works Maintenance Superintendent and Equipment Superintendent, 6.3% and 6.0% respectively, to an hourly salary range of \$55.7482 - \$67.3564 would align pay ranges across the Superintendent classifications.**

BACKGROUND

The Human Resources Department contracted with Cooperative Personnel Services (CPS) to conduct a classification survey and make a recommendation on the internal equity for the following classifications: Facilities Maintenance Superintendent, Parks Superintendent, Equipment Superintendent and Public Works Maintenance Superintendent. After a thorough review of the duty focus and classification of each position, a recommendation was made to assign all Superintendent classifications to the same pay range based on essential duties and scope of responsibility.

The Personnel Board met on December 3, 2018 and approved the following actions which include aligning pay ranges across the four Superintendent Classifications:

Action Item VII. Recommendation to Amend the Classification of Facilities Superintendent, Equipment Superintendent and Parks Superintendent.

Motion Seconded and Carried by Board Members Dixon and Murray

Vote: Ayes: 7  
Noes: 0  
Abstains: 0  
Absent: 2

Action Item VIII. Recommendation to Amend the Salary of Public Works Maintenance Superintendent.

Motion Seconded and Carried by Board Members Dixon and Murray

Vote: Ayes: 7

Noes: 0

Abstains: 0

Absent: 2

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

It has been the policy of the City to create the necessary classification and salary schedule to accommodate new duties and responsibilities, reflect programmatic changes, maintain competitive salaries and, when applicable, comply with regulatory requirements.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, (510) 981-6807

Attachments:

1. Class Specification: Equipment Superintendent
2. Class Specification: Public Works Maintenance Superintendent
3. Resolution and Exhibit A and B: Salary Schedules



CITY OF BERKELEY  
 Established Date: Nov 1, 1988  
 Revision Date: December 3, 2018

# Equipment Superintendent

Class Code:  
13480

Bargaining Unit: Public Employees Union, Local One

## SALARY RANGE

\$52.62 - \$63.58 Hourly  
 \$4,209.38 - \$5,086.51 Biweekly  
 \$9,120.33 - \$11,020.78 Monthly  
 \$109,443.98 - \$132,249.31 Annually

## DESCRIPTION:

### DEFINITION

Under administrative direction, plans, organizes, and directs, through subordinate supervisors, the activities of the Equipment Maintenance Division; per forms related work as assigned.

### CLASS CHARACTERISTICS

This class has division level responsibility for the administration of the City wide vehicle and equipment maintenance program within general policy guidelines. The incumbent is responsible for formulating policy, developing goals and objectives, supervising staff, administering the division budget, and directing day to day activities. It is distinguished from Senior Equipment Supervisor in that it has program planning and administration responsibilities for the entire division. It is further distinguished from Operations Manager, which is responsible for the administration of several assigned divisions or programs.

## EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Plans, organizes, coordinates, administers and directs the work of the Equipment Maintenance Division; develops and directs the implementation of goals, objectives, policies, procedures and work standards for the Division;
2. Develops and implements management systems, procedures and standards for program evaluation; prepares or directs the preparation of a variety of studies and reports related to current and long range City needs and develops specific proposals to meet them;
3. Directs maintenance and repair activities, including planning, estimation, scheduling, inspection and monitoring work being performed;
4. Directs the preparation and administration of the division budget; prepares and maintains a wide variety of written records and correspondence;
5. Directs the selection, supervision, work evaluation and discipline of division staff and provides for their training and development; interprets City personnel and MOU provisions; provides technical assistance to staff;
6. Prepares or reviews reports for the City Manager, boards, commission and other organizations; works closely with public and private organizations or individuals to explain or coordinate proposed programs; responds to complaints or inquiries by phone or in person;

7. Coordinates the work of the division with other City divisions and departments, outside agencies or concerned groups;
8. Ensures compliance of division activities to pertinent codes, regulations and guidelines; monitors developments related to equipment maintenance, evaluates their impact and implements policy and procedure improvements; integrates new program activities into maintenance schedules; prepares specifications and makes recommendations on the purchase, sale, and disposal of new and used vehicles and equipment;
9. Maintains security of the Corporation Yard;
10. Performs related duties as assigned.

## **KNOWLEDGE AND ABILITIES:**

Note: The level and scope of the knowledges and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Principles and practices of vehicle and equipment maintenance and repair as related to a large and varied fleet maintenance program;
2. Administrative principles and methods, including goal setting, program development and implementation, and employee supervision;
3. Principles and practices of budget development and administration;
4. Theories, principles, techniques and equipment used vehicle and equipment of maintenance and repair;
5. Safety regulations, safe work practices and safety equipment related to the work; codes, ordinances and guidelines pertaining to the work microcomputer applications related to the work;
6. Microcomputer applications related to the work.

Skill in:

1. Planning, assigning, directing and coordinating a variety of functional specialties with overlapping work areas;
2. Managing and directing a large vehicle and equipment program;
3. Selecting, motivating, and evaluating staff and providing for their training and development;
4. Preparing, administering and monitoring a division budget;
5. Analyzing complex operational and administrative problems, evaluating alternatives and recommending or implementing effective courses of action;
6. Developing and implementing goals, objectives, policies, procedures, work standards and management controls;
7. Preparing clear and concise records, reports, correspondence and other written materials;
8. Exercising independent judgment within general policy guidelines;
9. Establishing and maintaining effective working relationships with those encountered in the course of the work.

## **MINIMUM QUALIFICATIONS:**

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to graduation from high school supplemented by college level coursework in automotive mechanics or a closely related field and seven (7) years of increasingly responsible equipment maintenance experience at the journey level or above which includes a minimum of three (3) years supervision at a level equivalent to or above the m class. Additional administrative experience may be substituted for the supplemental coursework.

College level coursework in public or business administration, engineering or a closely related field may be substituted for

the non supervisory experience, on a year-for-year basis.

**OTHER REQUIREMENTS**

Must possess a valid California driver's license and have a satisfactory driving record.



# Public Works Maintenance Superintendent

Class Code:  
13120

Bargaining Unit: Public Employees Union, Local One

CITY OF BERKELEY  
Established Date: Oct 1, 1988  
Revision Date: November 5, 2018

## SALARY RANGE

\$52.47-\$63.33 Hourly  
\$4,197.51 - \$5,066.12 Biweekly  
\$9,094.61 - \$10,976.60 Monthly  
\$109,135.31 - \$131,719.12 Annually

## DESCRIPTION:

### DEFINITION

Under direction, plans, organizes, and directs, through subordinate supervisors, the activities of the Street and Sanitation Division; performs related work as assigned.

### CLASS CHARACTERISTICS

This class has division level responsibility for the administration of the City wide streets and sanitation program within general policy guidelines, responsibility for formulating policy, developing goals and objectives, supervising staff, administering the division budget, and directing day to day activities. It is distinguished from Senior Public Works Supervisor in that it has program planning and administration responsibilities for both the streets and sanitation programs, whereas the latter class is responsible for the daily operations for an assigned section. It is further distinguished from Operations Manager, which is responsible for the administration of several assigned divisions or programs.

## EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Plans, organizes, coordinates, administers and directs the work of the Street and Sanitation Division; develops and directs the implementation of goals, objectives, policies, procedures and work standards for the Division;
2. Develops and implements management systems, procedures and standards for program evaluation;
3. Prepares or directs the preparation of a variety of studies and reports related to current and long range City needs and develops specific proposals to meet them;
4. Directs maintenance and construction activities, including planning, estimation, scheduling, inspection and monitoring work being performed;
5. Directs the preparation and administration of the division budget;
6. Directs the selection, supervision, work evaluation and discipline of division staff and provides for their training and

development;

7. Interprets City personnel and MOU provisions;
8. Prepares or reviews reports for the City Manager, boards, commission and other organizations;
9. Works closely with public and private organizations or individuals to explain or coordinate proposed programs;
10. Responds to citizen complaints or inquiries by phone or in person;
11. Coordinates the work of the division with other City divisions and departments, outside agencies or concerned citizen groups;
12. Ensures compliance of division activities to pertinent codes, regulations and guidelines; monitors developments related to street and sewer construction and maintenance, evaluates their impact and implements policy and procedure improvements;
13. Provides technical assistance to staff;
14. Prepares and maintains written records and correspondence;
15. Integrates new program activities into maintenance schedules;
16. Responds to hazardous waste spills on emergency basis and coordinates inter agency response;
17. Coordinates City's Emergency Operations Plan for the Department.

## **KNOWLEDGE AND ABILITIES:**

Note: The level and scope of the knowledge and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Principles and practices of street and sewer construction, maintenance and repair;
2. Administrative principles and methods, including goal setting, program development and implementation;
3. Principles and practices of effective employee supervision, including selection, training, work evaluation and discipline;
4. Principles and practices of budget development and administration;
5. Theories, principles, techniques and equipment used in public works street and sewer maintenance and operations;
6. Safety regulations, safe work practices and safety equipment related to the work;
7. Codes, ordinances and guidelines pertaining to the work;
8. Micro computer applications related to the work.

Skill in:

1. Planning, assigning, directing and coordinating a variety of functional specialties with overlapping work areas;
2. Managing and directing a large street and sewer maintenance and construction program;
3. Selecting, motivating, and evaluating staff and providing for their training and development;
4. Preparing, administering and monitoring a division budget;
5. Analyzing complex operational and administrative problems, evaluating alternatives and recommending or implementing effective courses of action;
6. Developing and implementing goals, objectives, policies, procedures, work standards and management controls;
7. Preparing clear and concise records, reports, correspondence and other written materials;



8. Exercising independent judgment within general policy guidelines;
9. Establishing and maintaining effective working relationships with those encountered in the course of the work.

## **MINIMUM QUALIFICATIONS:**

Must possess a valid California driver's license and have a satisfactory driving record.

Equivalent to graduation from high school supplemented by college level coursework in civil engineering or a closely related field and seven (7) years of increasingly responsible street and sewer construction and maintenance experience which includes a minimum of three (3) years supervision equivalent to the level of the Public Works Supervisor class. Additional administrative experience may be substituted for the supplemental coursework.

College level coursework in public or business administration, civil engineering or a closely related field may be substituted for the non supervisory experience, on a year-for-year basis.

## **CLASSIFICATION HISTORY:**

Public Works Maintenance Superintendent  
Classification Code 13120  
Classification Established 10/01/1988  
Classification Revised 10/6/2008  
Classification Revised 11/5/2018  
FLSA Status Exempt  
Administrative Leave/Overtime Administrative Leave  
Representation Unit Local One  
Probationary Period One year  
Workers' Compensation Code 8830

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

CLASSIFICATION REVISION : PUBLIC WORKS MAINTENANCE SUPERINTENDENT  
AND PUBLIC WORKS EQUIPMENT SUPERINTENDENT

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, the Director of Public Works had recommended revising the Public Works Maintenance Superintendent and Equipment Superintendent classification; and

WHEREAS, the Department of Public Works and Human Resources Department have completed a classification and salary review; and

WHEREAS, the Personnel Board recommended on December 3, 2018 to revise the classifications of Public Works Maintenance Superintendent and Equipment Superintendent to an hourly salary range of \$55.7482 - \$67.3564; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No. 68,710-N.S., Classification and Salary Resolution for Public Employees Union - Local One is amended to increase the salary range for Public Works Maintenance Superintendent and Equipment Superintendent to an hourly salary range of \$55.7482 - \$67.3564 effective January 22, 2019 (Exhibits A and B).

**EXHIBIT A – Salaries – 3% COLA Eff 12/16/18**

| JOB CODE     | REP UNIT | CLASSIFICATION TITLE                                     | FLSA     | AL OT     | STEP A         | STEP B         | STEP C         | STEP D         | STEP E         | STEP F  |
|--------------|----------|----------------------------------------------------------|----------|-----------|----------------|----------------|----------------|----------------|----------------|---------|
| 13500        | M        | Accounting Manager                                       | E        | AL        | 57.8978        | 60.7848        | 63.8284        | 67.0195        | 70.3673        |         |
| 14630        | M        | Administrative & Fiscal Services Manager                 | E        | AL        | 51.3399        | 53.9111        | 56.6067        | 59.4405        | 62.4125        | 65.4742 |
| 13170        | M        | Animal Services Manager                                  | E        | AL        | 57.5277        | 60.2906        | 63.2164        | 66.3215        | 69.5123        |         |
| 14590        | P1       | Assistant Building and Safety Manager                    | E        | AL        | 58.6470        | 61.7294        | 64.9779        | 68.3993        | 71.9999        |         |
| 22060        | P1       | Assistant Civil Engineer (Reg)                           | E        | AL        | 50.7011        | 53.0710        | 55.7140        | 58.4260        | 61.3171        |         |
| 14720        | M        | Assistant Manager of Mental Health Services              | E        | AL        | 55.4254        | 58.2015        | 61.1145        | 64.1706        | 67.3815        |         |
| 22070        | P1       | Assistant Public Works Engineer                          | E        | OT        | 48.5027        | 50.7011        | 53.0710        | 55.7140        | 58.4260        |         |
| 20010        | P1       | Assistant Traffic Engineer                               | E        | AL        | 49.0681        | 51.2915        | 53.7311        | 56.4019        | 59.1398        |         |
| 22050        | P1       | Associate Civil Engineer                                 | E        | AL        | 55.8425        | 58.5884        | 61.3767        | 64.2854        | 67.4763        |         |
| 22030        | P1       | Associate Traffic Engineer                               | E        | AL        | 55.8425        | 58.5884        | 61.3767        | 64.2854        | 67.4763        |         |
| 22020        | P1       | Associate Utility Engineer                               | E        | AL        | 55.8425        | 58.5884        | 61.3767        | 64.2854        | 67.4763        |         |
| 13060        | M        | Building and Safety Manager                              | E        | AL        | 70.8366        | 74.9173        | 79.4328        | 83.8470        | 88.7022        |         |
| 22300        | P1       | Building Plans Engineer                                  | E        | AL        | 51.6649        | 54.3821        | 57.2452        | 60.2612        | 63.4301        |         |
| 14200        | M        | Camp Manager                                             | E        | AL        | 34.2878        | 36.0034        | 37.7971        | 39.6928        | 41.6747        |         |
| 37040        | P1       | Chief of Party                                           | N        | OT        | 44.5399        | 46.6539        | 48.8911        | 51.2928        | 53.6781        |         |
| 14690        | M        | Circulation Services Manager                             | E        | AL        | 48.4453        | 50.6960        | 53.1049        | 55.6504        | 58.3614        |         |
| 28370        | P1       | Civic Arts Coordinator                                   | E        | OT        | 44.1326        | 46.2334        | 48.5104        | 50.8864        | 53.3349        |         |
| 14270        | P1       | Code Enforcement Supervisor                              | E        | AL        | 46.8775        | 49.1702        | 51.5737        | 54.0632        | 56.6124        |         |
| 14160        | M        | Communications Manager                                   | E        | AL        | 50.4773        | 53.1281        | 55.9269        | 58.8739        | 61.9688        |         |
| 28140        | P1       | Community Services Specialist III                        | E        | AL        | 49.2214        | 51.5737        | 54.1144        | 56.7662        | 59.5122        |         |
| 28050        | P1       | Contract Administrator                                   | E        | AL        | 43.4049        | 45.9629        | 48.6774        | 51.5477        | 54.5088        |         |
| 28530        | P1       | Crime Analyst                                            | N        | OT        | 44.2768        | 45.4199        | 47.6881        | 50.0754        | 52.5760        |         |
| 14550        | P1       | Crime Scene Supervisor                                   | E        | OT        | 44.1572        | 46.1164        | 48.4259        | 50.8379        | 53.3875        |         |
| 13150        | M        | Customer Service Manager                                 | E        | AL        | 54.0119        | 56.6549        | 59.3240        | 62.1983        | 65.1834        |         |
| 26160        | P1       | Database Administrator                                   | E        | AL        | 49.7192        | 52.3361        | 55.0910        | 57.9898        | 61.0447        |         |
| 37020        | P2       | Drafting Technician                                      | N        | OT        | 34.6021        | 36.2274        | 37.8614        | 39.6407        | 41.5824        |         |
| 29230        | M        | Economic Development Project Coordinator                 | E        | AL        | 54.0119        | 56.6549        | 59.3240        | 62.2069        | 65.1834        |         |
| 24160        | P1       | Emergency Medical Services Advisor                       | E        | AL        | 47.9783        | 49.7382        | 52.2223        | 54.8379        | 57.5771        |         |
| 28280        | P1       | Employment Programs Administrator                        | E        | AL        | 48.6444        | 50.9557        | 53.4726        | 56.0964        | 58.7945        |         |
| 14260        | M        | Energy Program Manager                                   | E        | AL        | 53.8579        | 56.5512        | 59.3789        | 62.3480        | 65.4665        |         |
| 37030        | P2       | Engineering Inspector                                    | N        | OT        | 41.6529        | 43.5694        | 45.7489        | 47.8710        | 50.1331        |         |
| 24570        | P1       | Environmental Health Supervisor                          | E        | AL        | 48.8416        | 50.7082        | 52.6481        | 54.6610        | 56.7536        |         |
| <b>13480</b> | <b>M</b> | <b>Equipment Superintendent<br/>***effective 1/21/19</b> | <b>E</b> | <b>AL</b> | <b>55.7482</b> | <b>58.4514</b> | <b>61.2572</b> | <b>64.2854</b> | <b>67.3564</b> |         |
| 13440        | M        | Facilities Maintenance Superintendent                    | E        | AL        | 55.7482        | 58.4514        | 61.2572        | 64.2854        | 67.3564        |         |

| JOB          | REP      | CLASSIFICATION TITLE                                                     | ELSA     | AL        | STEP           | STEP           | STEP           | STEP           | STEP           | STEP |
|--------------|----------|--------------------------------------------------------------------------|----------|-----------|----------------|----------------|----------------|----------------|----------------|------|
| 13210        | M        | General Services Manager                                                 | E        | AL        | 55.1750        | 57.9297        | 60.8722        | 63.9433        | 67.2025        |      |
| 65210        | P1       | Harbormaster                                                             | E        | OT        |                |                | 43.7328        | 45.4067        | 47.2804        |      |
| 13770        | M        | Hazardous Materials Manager                                              | E        | AL        | 58.8930        | 61.7800        | 64.6918        | 67.8422        | 71.0663        |      |
| 16090        | P1       | Health Nutrition Program Coordinator                                     | N        | OT        | 43.6695        | 45.3890        | 47.1599        | 48.9733        | 50.9406        |      |
| 24470        | P1       | Health Planning, Education and Promotion                                 | E        | OT        | 45.1439        | 46.8972        | 48.8739        | 50.8885        | 52.9998        |      |
| 24730        | P1       | Health Services Program Specialist                                       | E        | OT        | 41.6081        | 43.2250        | 44.9014        | 46.6551        | 48.5027        |      |
| 16100        | P1       | Health Services Supervisor                                               | E        | AL        | 54.3455        | 56.4499        | 58.7852        | 61.2657        | 63.7551        |      |
| 23120        | P1       | Hearing Examiner                                                         | E        | AL        | 52.6602        | 56.0731        | 59.0331        | 61.6594        | 65.4316        |      |
| 14110        | M        | Home Energy Administrator                                                | E        | AL        | 45.7541        | 47.7633        | 49.9063        | 52.0495        | 54.3336        |      |
| 28980        | P1       | Homeless Services Coordinator                                            | E        | AL        | 48.8488        | 51.1899        | 53.7038        | 56.3429        | 59.0652        |      |
| 14580        | P1       | Housing Inspector Supervisor                                             | E        | AL        | 46.8775        | 49.1702        | 51.5737        | 54.0632        | 56.6124        |      |
| 22080        | P1       | Junior Public Works Engineer                                             | E        | OT        | 40.8466        | 42.7286        | 44.7732        | 46.9204        | 49.2043        |      |
| 13540        | M        | Land Use Planning Manager                                                | E        | AL        | 69.3924        | 72.8483        | 76.5010        | 80.3161        | 82.8825        |      |
| 14640        | M        | Library Information Systems Administrator                                | E        | AL        | 50.7021        | 55.7985        | 58.6103        | 61.5646        | 64.7279        |      |
| 14680        | M        | Library Services Manager                                                 | E        | AL        | 51.0692        | 53.5070        | 56.1160        | 58.6653        | 61.5398        |      |
| 13290        | M        | Manager of Aging Services                                                | E        | AL        | 57.7964        | 60.2442        | 63.2582        | 66.4215        | 69.7414        |      |
| 13730        | M        | Manager of Economic Development                                          | E        | AL        | 62.2668        | 65.3976        | 68.6651        | 72.0527        | 75.7225        |      |
| 13100        | M        | Manager of Engineering                                                   | E        | AL        | 70.8296        | 74.9184        | 79.2470        | 83.8404        | 88.6996        |      |
| 13680        | M        | Manager of Environmental Health                                          | E        | AL        | 57.8012        | 60.6070        | 63.4815        | 66.5694        | 69.7433        |      |
| 13520        | M        | Manager of Housing and Community Services                                | E        | AL        | 60.3942        | 63.4301        | 66.5988        | 69.8873        | 73.4481        |      |
| 13390        | M        | Manager of Mental Health Services                                        | E        | AL        | 65.0468        | 68.1436        | 71.4539        | 74.9611        | 78.6052        |      |
| 13670        | M        | Manager of Public Health Services                                        | E        | AL        | 60.8167        | 64.0216        | 67.3934        | 70.9439        | 74.6790        |      |
| 13640        | M        | Manager, Family Health and Nursing Services                              | E        | AL        | 61.9970        | 65.0990        | 68.3488        | 71.7680        | 75.3566        |      |
| 14220        | P1       | Mental Health Clinical Supervisor                                        | E        | AL        | 46.7229        | 49.1836        | 51.7755        | 54.4985        | 57.3670        |      |
| 14210        | P1       | Mental Health Program Supervisor                                         | E        | AL        | 51.1942        | 53.5385        | 56.0717        | 58.5968        | 61.2538        |      |
| 14280        | M        | Parking Enforcement Manager                                              | E        | AL        | 44.3970        | 46.4166        | 48.8612        | 51.4321        | 54.1427        |      |
| 13270        | M        | Parking Services Manager                                                 | E        | AL        | 50.9836        | 53.4815        | 56.0477        | 58.6994        | 61.5398        |      |
| 13320        | M        | Parks Superintendent                                                     | E        | AL        | 55.7482        | 58.4514        | 61.2572        | 64.2854        | 67.3564        |      |
| 13710        | P1       | Permit Center Coordinator                                                | E        | AL        | 55.3784        | 58.1088        | 60.8922        | 63.8486        | 66.8711        |      |
| 14560        | P1       | Principal Planner                                                        | E        | AL        |                | 59.1232        | 61.8295        | 64.5355        | 67.4391        |      |
| 13590        | P1       | Public Health Program Physician-Deputy Health Officer                    | E        | AL        | 83.2314        | 87.4184        | 91.7365        | 96.3099        | 101.1052       |      |
| 13220        | M        | Public Safety Business Manager                                           | E        | AL        | 56.4069        | 59.1016        | 62.0272        | 65.0812        | 68.1948        |      |
| <b>13120</b> | <b>M</b> | <b>Public Works Maintenance Superintendent<br/>*** effective 1/22/19</b> | <b>E</b> | <b>AL</b> | <b>55.7482</b> | <b>58.4514</b> | <b>61.2572</b> | <b>64.2854</b> | <b>67.3564</b> |      |
| 13650        | M        | Public Works Operations Manager                                          | E        | AL        | 59.5863        | 62.7252        | 66.0263        | 69.5014        | 73.1565        |      |
| 14750        | M        | Real Property Administrator                                              | E        | AL        | 55.7482        | 58.4514        | 61.2572        | 64.2854        | 67.3564        |      |
| 13510        | M        | Records Manager                                                          | E        | AL        | 47.5788        | 49.8373        | 52.3180        | 54.8928        | 57.5104        |      |
| 13330        | M        | Recreation and Youth Services Manager                                    | E        | AL        | 57.5277        | 60.0427        | 63.0451        | 66.1931        | 69.5123        |      |

| JOB   | REP | CLASSIFICATION TITLE                             | ELSA | AL | STEP    | STEP    | STEP    | STEP    | STEP    | STEP |
|-------|-----|--------------------------------------------------|------|----|---------|---------|---------|---------|---------|------|
| 13340 | P1  | Recreation Program Supervisor                    | E    | AL | 39.9514 | 41.9507 | 44.0472 | 46.2554 | 48.5682 |      |
| 28900 | M   | Recycling Program Manager                        | E    | AL | 50.7182 | 53.1907 | 55.6885 | 58.4260 | 61.2315 |      |
| 13530 | M   | Revenue Collection Manager                       | E    | AL | 54.0119 | 56.6549 | 59.3240 | 62.1983 | 65.1834 |      |
| 21350 | M   | Revenue Development Supervisor                   | E    | AL | 47.7122 | 49.9774 | 52.4422 | 54.9998 | 57.6704 |      |
| 21190 | P1  | Senior Accountant                                | E    | AL | 47.7756 | 50.0767 | 52.5320 | 55.1152 | 57.7501 |      |
| 21200 | P1  | Senior Auditor                                   | E    | AL | 47.7072 | 49.9742 | 52.4378 | 55.0040 | 57.6644 |      |
| 13350 | P1  | Senior Building Maintenance Supervisor           | E    | OT | 43.5071 | 45.5684 | 47.8099 | 50.0340 | 52.3951 |      |
| 22010 | P1  | Senior Building Plans Engineer                   | E    | AL | 63.1136 | 66.2869 | 69.5891 | 73.0706 | 76.2274 |      |
| 28010 | P1  | Senior Buyer                                     | N    | OT | 40.0600 | 41.9590 | 43.8921 | 46.0225 | 48.1348 |      |
| 14150 | M   | Senior Citizen Center Director                   | E    | OT | 39.9007 | 41.6691 | 43.3881 | 45.1240 | 47.4353 |      |
| 28340 | P1  | Senior Community Development Project Coordinator | E    | AL | 54.0119 | 56.6549 | 59.3240 | 62.2069 | 65.1834 |      |
| 37130 | P2  | Senior Drafting Technician                       | N    | OT | 37.9598 | 39.7117 | 41.5542 | 43.4704 | 45.5926 |      |
| 14050 | P1  | Senior Electrical Supervisor                     | E    | AL |         |         | 55.5947 | 58.1116 | 60.9742 |      |
| 14530 | P1  | Senior Equipment Supervisor                      | E    | AL | 45.4319 | 47.5960 | 49.9572 | 52.3863 | 54.9272 |      |
| 14070 | P1  | Senior Forestry Supervisor                       | E    | OT | 48.3894 | 50.6758 | 53.1763 | 55.6439 | 58.2680 |      |
| 24680 | P1  | Senior Health Services Program Specialist        | E    | AL | 47.4592 | 49.2557 | 51.1717 | 53.3190 | 55.3633 |      |
| 23130 | P1  | Senior Hearing Examiner                          | E    | AL | 59.9841 | 63.9116 | 67.2406 | 70.2527 | 74.5661 |      |
| 14080 | P1  | Senior Landscape Gardener Supervisor             | E    | OT | 48.3894 | 50.6758 | 53.1763 | 55.6439 | 58.2680 |      |
| 28110 | P1  | Senior Management Analyst                        | E    | AL | 49.2214 | 51.5737 | 54.1144 | 56.7662 | 59.5122 |      |
| 14060 | P1  | Senior Public Works Supervisor                   | E    | OT | 43.5071 | 45.5684 | 47.8099 | 50.0340 | 52.3951 |      |
| 14540 | P1  | Senior Solid Waste Supervisor                    | E    | OT | 43.9178 | 45.9965 | 48.2631 | 50.5047 | 52.8823 |      |
| 14600 | P1  | Senior Systems Analyst                           | E    | AL | 53.5756 | 56.2445 | 59.0930 | 62.0784 | 65.2608 |      |
| 14500 | M   | Seniors Nutrition Program Supervisor             | N    | OT | 41.4797 | 43.4642 | 45.4833 | 47.6562 | 50.0596 |      |
| 13140 | M   | Solid Waste and Recycling Manager                | E    | AL | 65.0468 | 68.1436 | 71.4539 | 74.9611 | 78.6052 |      |
| 65200 | P1  | Solid Waste Supervisor                           | E    | OT |         |         | 42.9114 | 44.5315 | 46.3742 |      |
| 13300 | P1  | Supervising Building Inspector                   | E    | AL | 54.7219 | 57.4335 | 60.5303 | 63.0964 | 66.1333 |      |
| 14040 | M   | Supervising Civil Engineer                       | E    | AL | 63.2931 | 66.3469 | 69.5550 | 72.9168 | 76.4239 |      |
| 12220 | M   | Supervising Hearing Examiner                     | E    | AL | 64.8770 | 68.1972 | 71.6514 | 75.2622 | 79.0671 |      |
| 24550 | P1  | Supervising Public Health Nurse                  | E    | AL | 59.7071 | 62.0844 | 64.6508 | 67.3159 | 70.1041 |      |
| 14760 | M   | Supervising Systems Analyst                      | E    | AL | 63.9433 | 67.0826 | 70.2906 | 73.7550 | 77.2881 |      |
| 13400 | M   | Supervising Traffic Engineer                     | E    | AL | 63.7721 | 67.0229 | 70.4446 | 74.0374 | 77.8610 |      |
| 37110 | P2  | Survey Technician                                | N    | OT | 36.3722 | 38.0666 | 39.8105 | 41.6856 | 43.7255 |      |
| 21210 | P1  | Systems Accountant                               | E    | AL | 53.5756 | 56.2445 | 59.0930 | 62.0784 | 65.2608 |      |
| 30010 | P1  | Traffic Engineering Assistant                    | N    | OT |         |         | 36.9973 | 38.8021 | 40.5729 |      |
| 13410 | M   | Transportation Manager                           | E    | AL | 68.8611 | 72.3003 | 75.9186 | 79.7087 | 83.6999 |      |
| 14670 | M   | Transportation Services Coordinator              | E    | AL | 38.7394 | 40.6815 | 42.7129 | 44.8515 | 47.0914 |      |
| 14620 | M   | Treasury Manager                                 | E    | AL | 57.8998 | 60.7867 | 63.8296 | 67.0165 | 70.3716 |      |
| 13690 | M   | Waterfront Manager                               | E    | AL | 55.7482 | 58.4514 | 61.2572 | 64.2854 | 67.3564 |      |
| 14700 | P1  | Waterfront Supervisor                            | E    | AL | 45.0558 | 47.4325 | 49.9294 | 52.5582 | 55.3250 |      |

| JOB   | REP | CLASSIFICATION TITLE           | ELSA | AL | STEP    | STEP    | STEP    | STEP    | STEP    | STEP |
|-------|-----|--------------------------------|------|----|---------|---------|---------|---------|---------|------|
| 28870 | P1  | Watershed Resources Specialist | E    | AL | 39.8990 | 42.0191 | 43.9874 | 46.1810 | 48.4937 |      |

**EXHIBIT B – Salaries – 2% COLA Eff 10/20/19**

| JOB CODE     | REP UNIT | CLASSIFICATION TITLE                                      | FLSA     | AL OT     | STEP A        | STEP B         | STEP C         | STEP D         | STEP E         | STEP F  |
|--------------|----------|-----------------------------------------------------------|----------|-----------|---------------|----------------|----------------|----------------|----------------|---------|
| 13500        | M        | Accounting Manager                                        | E        | AL        | 60.2369       | 63.2405        | 66.4071        | 69.7271        | 73.2101        |         |
| 14630        | M        | Administrative & Fiscal Services Manager                  | E        | AL        | 53.4140       | 56.0891        | 58.8936        | 61.8419        | 64.9340        | 68.1194 |
| 13170        | M        | Animal Services Manager                                   | E        | AL        | 59.8519       | 62.7263        | 65.7703        | 69.0009        | 72.3206        |         |
| 14590        | P1       | Assistant Building and Safety Manager                     | E        | AL        | 61.0163       | 64.2233        | 67.6031        | 71.1626        | 74.9087        |         |
| 22060        | P1       | Assistant Civil Engineer (Reg)                            | E        | AL        | 52.7494       | 55.2150        | 57.9649        | 60.7864        | 63.7943        |         |
| 14720        | M        | Assistant Manager of Mental Health Services               | E        | AL        | 57.6646       | 60.5528        | 63.5835        | 66.7631        | 70.1037        |         |
| 22070        | P1       | Assistant Public Works Engineer                           | E        | OT        | 50.4623       | 52.7494        | 55.2150        | 57.9649        | 60.7864        |         |
| 20010        | P1       | Assistant Traffic Engineer                                | E        | AL        | 51.0505       | 53.3636        | 55.9018        | 58.6805        | 61.5291        |         |
| 22050        | P1       | Associate Civil Engineer                                  | E        | AL        | 58.0986       | 60.9554        | 63.8563        | 66.8825        | 70.2023        |         |
| 22030        | P1       | Associate Traffic Engineer                                | E        | AL        | 58.0986       | 60.9554        | 63.8563        | 66.8825        | 70.2023        |         |
| 22020        | P1       | Associate Utility Engineer                                | E        | AL        | 58.0986       | 60.9554        | 63.8563        | 66.8825        | 70.2023        |         |
| 13060        | M        | Building and Safety Manager                               | E        | AL        | 73.6984       | 77.9439        | 82.6419        | 87.2344        | 92.2857        |         |
| 22300        | P1       | Building Plans Engineer                                   | E        | AL        | 53.7522       | 56.5791        | 59.5579        | 62.6957        | 65.9927        |         |
| 14200        | M        | Camp Manager                                              | E        | AL        | 35.6731       | 37.4580        | 39.3241        | 41.2964        | 43.3584        |         |
| 37040        | P1       | Chief of Party                                            | N        | OT        | 46.3393       | 48.5387        | 50.8663        | 53.3651        | 55.8467        |         |
| 14690        | M        | Circulation Services Manager                              | E        | AL        | 50.4025       | 52.7441        | 55.2503        | 57.8987        | 60.7192        |         |
| 28370        | P1       | Civic Arts Coordinator                                    | E        | OT        | 45.9156       | 48.1013        | 50.4702        | 52.9422        | 55.4896        |         |
| 14270        | P1       | Code Enforcement Supervisor                               | E        | AL        | 48.7714       | 51.1567        | 53.6573        | 56.2474        | 58.8995        |         |
| 14160        | M        | Communications Manager                                    | E        | AL        | 52.5165       | 55.2745        | 58.1863        | 61.2524        | 64.4724        |         |
| 28140        | P1       | Community Services Specialist III                         | E        | AL        | 51.2099       | 53.6573        | 56.3006        | 59.0595        | 61.9164        |         |
| 28050        | P1       | Contract Administrator                                    | E        | AL        | 45.1585       | 47.8198        | 50.6439        | 53.6303        | 56.7110        |         |
| 28530        | P1       | Crime Analyst                                             | N        | OT        | 46.0655       | 47.2549        | 49.6147        | 52.0984        | 54.7001        |         |
| 14550        | P1       | Crime Scene Supervisor                                    | E        | OT        | 45.9411       | 47.9795        | 50.3823        | 52.8918        | 55.5444        |         |
| 13150        | M        | Customer Service Manager                                  | E        | AL        | 56.1939       | 58.9438        | 61.7207        | 64.7111        | 67.8168        |         |
| 26160        | P1       | Database Administrator                                    | E        | AL        | 51.7279       | 54.4505        | 57.3167        | 60.3326        | 63.5109        |         |
| 37020        | P2       | Drafting Technician                                       | N        | OT        | 36.0000       | 37.6909        | 39.3910        | 41.2422        | 43.2623        |         |
| 29230        | M        | Economic Development Project Coordinator                  | E        | AL        | 56.1939       | 58.9438        | 61.7207        | 64.7200        | 67.8168        |         |
| 24160        | P1       | Emergency Medical Services Advisor                        | E        | AL        | 49.9167       | 51.7477        | 54.3320        | 57.0534        | 59.9032        |         |
| 28280        | P1       | Employment Programs Administrator                         | E        | AL        | 50.6096       | 53.0143        | 55.6329        | 58.3627        | 61.1698        |         |
| 14260        | M        | Energy Program Manager                                    | E        | AL        | 56.0338       | 58.8358        | 61.7778        | 64.8669        | 68.1113        |         |
| 37030        | P2       | Engineering Inspector                                     | N        | OT        | 43.3357       | 45.3296        | 47.5972        | 49.8050        | 52.1585        |         |
| 24570        | P1       | Environmental Health Supervisor                           | E        | AL        | 50.8148       | 52.7568        | 54.7751        | 56.8693        | 59.0465        |         |
| <b>13480</b> | <b>M</b> | <b>Equipment Superintendent<br/>*** effective 1/22/19</b> | <b>E</b> | <b>AL</b> | <b>58.005</b> | <b>60.8128</b> | <b>63.7319</b> | <b>66.8825</b> | <b>70.0776</b> |         |

| JOB          | REP      | CLASSIFICATION TITLE                                                           | FLSA     | AL        | STEP           | STEP           | STEP           | STEP           | STEP           | STEP |
|--------------|----------|--------------------------------------------------------------------------------|----------|-----------|----------------|----------------|----------------|----------------|----------------|------|
| 13440        | M        | Facilities Maintenance Superintendent                                          | E        | AL        | 58.0005        | 60.8128        | 63.7319        | 66.8825        | 70.0776        |      |
| 13210        | M        | General Services Manager                                                       | E        | AL        | 57.4041        | 60.2701        | 63.3314        | 66.5266        | 69.9175        |      |
| 65210        | P1       | Harbormaster                                                                   | E        | OT        |                |                | 45.4997        | 47.2411        | 49.1905        |      |
| 13770        | M        | Hazardous Materials Manager                                                    | E        | AL        | 61.2723        | 64.2759        | 67.3053        | 70.5830        | 73.9374        |      |
| 16090        | P1       | Health Nutrition Program Coordinator                                           | N        | OT        | 45.4338        | 47.2227        | 49.0652        | 50.9519        | 52.9986        |      |
| 24470        | P1       | Health Planning, Education and Promotion                                       | E        | OT        | 46.9677        | 48.7918        | 50.8484        | 52.9444        | 55.1410        |      |
| 24730        | P1       | Health Services Program Specialist                                             | E        | OT        | 43.2891        | 44.9713        | 46.7154        | 48.5400        | 50.4623        |      |
| 16100        | P1       | Health Services Supervisor                                                     | E        | AL        | 56.5410        | 58.7305        | 61.1601        | 63.7408        | 66.3308        |      |
| 23120        | P1       | Hearing Examiner                                                               | E        | AL        | 54.7877        | 58.3385        | 61.4181        | 64.1505        | 68.0750        |      |
| 14110        | M        | Home Energy Administrator                                                      | E        | AL        | 47.6026        | 49.6930        | 51.9225        | 54.1523        | 56.5287        |      |
| 28980        | P1       | Homeless Services Coordinator                                                  | E        | AL        | 50.8223        | 53.2580        | 55.8735        | 58.6192        | 61.4514        |      |
| 14580        | P1       | Housing Inspector Supervisor                                                   | E        | AL        | 48.7714        | 51.1567        | 53.6573        | 56.2474        | 58.8995        |      |
| 22080        | P1       | Junior Public Works Engineer                                                   | E        | OT        | 42.4968        | 44.4549        | 46.5821        | 48.8160        | 51.1922        |      |
| 13540        | M        | Land Use Planning Manager                                                      | E        | AL        | 72.1958        | 75.7914        | 79.5916        | 83.5608        | 86.2310        |      |
| 14640        | M        | Library Information Systems Administrator                                      | E        | AL        | 52.7504        | 58.0528        | 60.9782        | 64.0518        | 67.3430        |      |
| 14680        | M        | Library Services Manager                                                       | E        | AL        | 53.1324        | 55.6686        | 58.3831        | 61.0354        | 64.0260        |      |
| 13290        | M        | Manager of Aging Services                                                      | E        | AL        | 60.1313        | 62.6781        | 65.8139        | 69.1049        | 72.5589        |      |
| 13730        | M        | Manager of Economic Development                                                | E        | AL        | 64.7823        | 68.0397        | 71.4392        | 74.9637        | 78.7817        |      |
| 13100        | M        | Manager of Engineering                                                         | E        | AL        | 73.6911        | 77.9451        | 82.4485        | 87.2275        | 92.2831        |      |
| 13680        | M        | Manager of Environmental Health                                                | E        | AL        | 60.1363        | 63.0555        | 66.0461        | 69.2588        | 72.5610        |      |
| 13520        | M        | Manager of Housing and Community Services                                      | E        | AL        | 62.8341        | 65.9927        | 69.2894        | 72.7107        | 76.4154        |      |
| 13390        | M        | Manager of Mental Health Services                                              | E        | AL        | 67.6747        | 70.8966        | 74.3407        | 77.9895        | 81.7808        |      |
| 13670        | M        | Manager of Public Health Services                                              | E        | AL        | 63.2737        | 66.6080        | 70.1161        | 73.8101        | 77.6961        |      |
| 13640        | M        | Manager, Family Health and Nursing Services                                    | E        | AL        | 64.5016        | 67.7290        | 71.1101        | 74.6675        | 78.4010        |      |
| 14220        | P1       | Mental Health Clinical Supervisor                                              | E        | AL        | 48.6105        | 51.1706        | 53.8672        | 56.7003        | 59.6846        |      |
| 14210        | P1       | Mental Health Program Supervisor                                               | E        | AL        | 53.2625        | 55.7015        | 58.3370        | 60.9641        | 63.7285        |      |
| 14280        | M        | Parking Enforcement Manager                                                    | E        | AL        | 46.1906        | 48.2918        | 50.8352        | 53.5099        | 56.3301        |      |
| 13270        | M        | Parking Services Manager                                                       | E        | AL        | 53.0434        | 55.6421        | 58.3121        | 61.0709        | 64.0260        |      |
| 13320        | M        | Parks Superintendent                                                           | E        | AL        | 58.0005        | 60.8128        | 63.7319        | 66.8825        | 70.0776        |      |
| 13710        | P1       | Permit Center Coordinator                                                      | E        | AL        | 57.6157        | 60.4564        | 63.3522        | 66.4281        | 69.5727        |      |
| 14560        | P1       | Principal Planner                                                              | E        | AL        |                | 61.5118        | 64.3274        | 67.1427        | 70.1637        |      |
| 13590        | P1       | Public Health Program Physician-Deputy Health Officer                          | E        | AL        | 86.5939        | 90.9501        | 95.4426        | 100.2008       | 105.1898       |      |
| 13220        | M        | Public Safety Business Manager                                                 | E        | AL        | 58.6857        | 61.4893        | 64.5331        | 67.7105        | 70.9499        |      |
| <b>13120</b> | <b>M</b> | <b>Public Works Maintenance Superintendent</b><br><b>*** effective 1/22/19</b> | <b>E</b> | <b>AL</b> | <b>58.0005</b> | <b>60.8128</b> | <b>63.7319</b> | <b>66.8825</b> | <b>70.0776</b> |      |
| 13650        | M        | Public Works Operations Manager                                                | E        | AL        | 61.9936        | 65.2593        | 68.6937        | 72.3092        | 76.1120        |      |



| JOB   | REP | CLASSIFICATION TITLE                             | FLSA | AL | STEP    | STEP    | STEP    | STEP    | STEP    | STEP |
|-------|-----|--------------------------------------------------|------|----|---------|---------|---------|---------|---------|------|
| 14750 | M   | Real Property Administrator                      | E    | AL | 58.0005 | 60.8128 | 63.7319 | 66.8825 | 70.0776 |      |
| 13510 | M   | Records Manager                                  | E    | AL | 49.5010 | 51.8507 | 54.4317 | 57.1105 | 59.8338 |      |
| 13330 | M   | Recreation and Youth Services Manager            | E    | AL | 59.8519 | 62.4685 | 65.5921 | 68.8673 | 72.3206 |      |
| 13340 | P1  | Recreation Program Supervisor                    | E    | AL | 41.5654 | 43.6455 | 45.8267 | 48.1241 | 50.5304 |      |
| 28900 | M   | Recycling Program Manager                        | E    | AL | 52.7673 | 55.3396 | 57.9383 | 60.7864 | 63.7052 |      |
| 13530 | M   | Revenue Collection Manager                       | E    | AL | 56.1939 | 58.9438 | 61.7207 | 64.7111 | 67.8168 |      |
| 21350 | M   | Revenue Development Supervisor                   | E    | AL | 49.6397 | 51.9964 | 54.5608 | 57.2218 | 60.0003 |      |
| 21190 | P1  | Senior Accountant                                | E    | AL | 49.7057 | 52.0998 | 54.6543 | 57.3419 | 60.0832 |      |
| 21200 | P1  | Senior Auditor                                   | E    | AL | 49.6345 | 51.9932 | 54.5563 | 57.2262 | 59.9941 |      |
| 13350 | P1  | Senior Building Maintenance Supervisor           | E    | OT | 45.2647 | 47.4094 | 49.7414 | 52.0554 | 54.5119 |      |
| 22010 | P1  | Senior Building Plans Engineer                   | E    | AL | 65.6634 | 68.9649 | 72.4005 | 76.0226 | 79.3069 |      |
| 28010 | P1  | Senior Buyer                                     | N    | OT | 41.6784 | 43.6542 | 45.6653 | 47.8819 | 50.0795 |      |
| 14150 | M   | Senior Citizen Center Director                   | E    | OT | 41.5127 | 43.3526 | 45.1410 | 46.9470 | 49.3517 |      |
| 28340 | P1  | Senior Community Development Project Coordinator | E    | AL | 56.1939 | 58.9438 | 61.7207 | 64.7200 | 67.8168 |      |
| 37130 | P2  | Senior Drafting Technician                       | N    | OT | 39.4934 | 41.3160 | 43.2330 | 45.2266 | 47.4346 |      |
| 14050 | P1  | Senior Electrical Supervisor                     | E    | AL |         |         | 57.8407 | 60.4593 | 63.4376 |      |
| 14530 | P1  | Senior Equipment Supervisor                      | E    | AL | 47.2673 | 49.5189 | 51.9754 | 54.5027 | 57.1462 |      |
| 14070 | P1  | Senior Forestry Supervisor                       | E    | OT | 50.3443 | 52.7231 | 55.3246 | 57.8919 | 60.6221 |      |
| 24680 | P1  | Senior Health Services Program Specialist        | E    | AL | 49.3766 | 51.2456 | 53.2390 | 55.4731 | 57.6000 |      |
| 23130 | P1  | Senior Hearing Examiner                          | E    | AL | 62.4075 | 66.4936 | 69.9571 | 73.0910 | 77.5785 |      |
| 14080 | P1  | Senior Landscape Gardener Supervisor             | E    | OT | 50.3443 | 52.7231 | 55.3246 | 57.8919 | 60.6221 |      |
| 28110 | P1  | Senior Management Analyst                        | E    | AL | 51.2099 | 53.6573 | 56.3006 | 59.0595 | 61.9164 |      |
| 14060 | P1  | Senior Public Works Supervisor                   | E    | OT | 45.2647 | 47.4094 | 49.7414 | 52.0554 | 54.5119 |      |
| 14540 | P1  | Senior Solid Waste Supervisor                    | E    | OT | 45.6921 | 47.8547 | 50.2130 | 52.5451 | 55.0187 |      |
| 14600 | P1  | Senior Systems Analyst                           | E    | AL | 55.7400 | 58.5168 | 61.4804 | 64.5864 | 67.8973 |      |
| 14500 | M   | Seniors Nutrition Program Supervisor             | N    | OT | 43.1555 | 45.2202 | 47.3209 | 49.5815 | 52.0820 |      |
| 13140 | M   | Solid Waste and Recycling Manager                | E    | AL | 67.6747 | 70.8966 | 74.3407 | 77.9895 | 81.7808 |      |
| 65200 | P1  | Solid Waste Supervisor                           | E    | OT |         |         | 44.6450 | 46.3305 | 48.2477 |      |
| 13300 | P1  | Supervising Building Inspector                   | E    | AL | 56.9326 | 59.7538 | 62.9757 | 65.6455 | 68.8051 |      |
| 14040 | M   | Supervising Civil Engineer                       | E    | AL | 65.8502 | 69.0273 | 72.3650 | 75.8626 | 79.5114 |      |
| 12220 | M   | Supervising Hearing Examiner                     | E    | AL | 67.4980 | 70.9523 | 74.5461 | 78.3027 | 82.2614 |      |
| 24550 | P1  | Supervising Public Health Nurse                  | E    | AL | 62.1192 | 64.5926 | 67.2627 | 70.0354 | 72.9363 |      |
| 14760 | M   | Supervising Systems Analyst                      | E    | AL | 66.5266 | 69.7928 | 73.1303 | 76.7347 | 80.4106 |      |
| 13400 | M   | Supervising Traffic Engineer                     | E    | AL | 66.3485 | 69.7307 | 73.2906 | 77.0285 | 81.0066 |      |
| 37110 | P2  | Survey Technician                                | N    | OT | 37.8416 | 39.6045 | 41.4188 | 43.3697 | 45.4920 |      |
| 21210 | P1  | Systems Accountant                               | E    | AL | 55.7400 | 58.5168 | 61.4804 | 64.5864 | 67.8973 |      |
| 30010 | P1  | Traffic Engineering Assistant                    | N    | OT |         |         | 38.4919 | 40.3697 | 42.2121 |      |

| JOB   | REP | CLASSIFICATION TITLE                | ELSA | AL | STEP    | STEP    | STEP    | STEP    | STEP    | STEP |
|-------|-----|-------------------------------------|------|----|---------|---------|---------|---------|---------|------|
| 13410 | M   | Transportation Manager              | E    | AL | 71.6431 | 75.2212 | 78.9857 | 82.9290 | 87.0814 |      |
| 14670 | M   | Transportation Services Coordinator | E    | AL | 40.3045 | 42.3250 | 44.4385 | 46.6635 | 48.9939 |      |
| 14620 | M   | Treasury Manager                    | E    | AL | 60.2390 | 63.2424 | 66.4083 | 69.7239 | 73.2146 |      |
| 13690 | M   | Waterfront Manager                  | E    | AL | 58.0005 | 60.8128 | 63.7319 | 66.8825 | 70.0776 |      |
| 14700 | P1  | Waterfront Supervisor               | E    | AL | 46.8760 | 49.3488 | 51.9466 | 54.6816 | 57.5601 |      |
| 28870 | P1  | Watershed Resources Specialist      | E    | AL | 41.5109 | 43.7167 | 45.7644 | 48.0467 | 50.4529 |      |



Office of the City Manager

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Fee Assessment – State of California Self-Insurance Fund (Workers' Compensation Program)

RECOMMENDATION

Adopt a Resolution amending Resolution 68,696-N.S. to authorize payment to the State of California Department of Industrial Relations for Fiscal Year 2019 for administering the Workers' Compensation Program for an additional amount of \$4,041.84 with a total amount not to exceed of \$223,041.84.

FISCAL IMPACTS OF RECOMMENDATION

The Fiscal Year 2018 Assessment Fee totaled \$182,176 which was a 10% increase over the 2017 Fee. City Council met on December 4, 2018. At that time the 2019 fee had not yet been determined by the Department of Industrial Relations. Our third party administrator, Innovative Claims Solutions (ICS), anticipated that the Fiscal Year 2019 fee would be no more than 20% above the Fiscal Year 2018 fee. **With this information, on December 4, 2018, City Council approved Resolution No. 68,696-N.S. which authorized payment to not exceed \$219,000.**

On December 7, 2018, City Human Resources Department received the official 2019 assessment fees invoice from the Department of Industrial Relations, Office of Self-Insurance Plans. The total billed is \$223,041.84 which is a 22.43% increase. **This invoice exceeds the approval amount of \$219,000 in Resolution No. 68,696-N.S by \$4,041.84.** Funding for this annual fee is included in the Workers' Compensation Self-Insurance Fund, Budget Code 676-99-900-900-0000-000-472-612240-.

BACKGROUND

The State of California Department of Industrial Relations regulates the Workers' Compensation Insurance Industry. Under California Labor Code Sections 62.5 and 62, every year, each City is assessed a fee by the Department of Industrial Relations to support the administration of the State's Workers' Compensation Program. The assessments provide a stable funding source to support operations of the courts to resolve claims more quickly and improve the overall operation of the state workers' compensation system; to ensure safe and healthy working conditions on the job; to

ensure the enforcement of labor standards and requirements for workers' compensation coverage.

Labor Code Sections 62.5 and 62.6 require allocation of the total assessment between insured and self-insured employers in proportion to payroll for the most recent year available. The City's total assessment is calculated by multiplying Self-Insured Employer Assessment Factors for each assessment by the total indemnity paid by the City.

On December 5, 2017, Council Approved Resolution No. 68,245-N.S. authorizing the Workers' Compensation payment to the State of California, Department of Industrial Relations for Fiscal Year 2018 in an amount not to exceed \$182,176. The actual Fiscal Year 2018 Assessment Fee totaled \$182,176.

For Fiscal Year 2019 the actual Assessment Fee total billed was \$223,041.84. The increase is primarily associated with administrative costs due to the rising costs of pursuing employers who break employment laws, including employers who violate workplace safety standards statewide and those who fail to carry workers' compensation coverage for their workforce.

The City's share for the Fiscal Year 2019 assessment authorized under Labor Code Sections 62.5 and 62.6 for our self-insurance plan will be broken down as follows:

- I. Workers' Compensation Administration Revolving Fund Assessment
- II. Uninsured Employers Benefits Trust Fund Assessment
- III. Subsequent Injuries Benefits Trust Fund Assessment
- IV. Occupational Safety and Health Fund Assessment
- V. Workers' Compensation Fraud Account Assessment
- VI. Labor Enforcement and Compliance Fund

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Required annual funding is for the State of California, Department of Industrial Relations.

ALTERNATIVE ACTIONS CONSIDERED

None. This is a state-mandated fee assessment.

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, 981-6807

Attachments:

1: Resolution

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

AUTHORIZING PAYMENT TO THE STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS (WORKERS' COMPENSATION PROGRAM) FOR FISCAL YEAR 2019 FEES FOR AN ADDITIONAL AMOUNT OF \$4,041.84 FOR A TOTAL AMOUNT NOT TO EXCEED OF \$223,041.84

WHEREAS, the City of Berkeley is Self-Insured for Workers' Compensation since 1979; and

WHEREAS, the Workers' Compensation Insurance Industry is administered and regulated by the State of California, Department of Industrial Relations; and

WHEREAS, the State of California, under California Labor Code Section 62.5 and 62.6, authorizes the Department of Industrial Relations to assess fees to employers for costs of administering the Workers' Compensation Program; and

WHEREAS, the City of Berkeley is assessed each year by the Department of Industrial Relations to support the state program; and

WHEREAS, for Council adopted Resolution 68,696-N.S. for Fiscal Year 2019 for Fee Assessment – State of California Self-Insurance Fund (Workers' Compensation Program) for \$219,000.00; and

WHEREAS, for Fiscal Year 2019, the City's share of assessments authorized by Labor Code Sections 62.5 and 62.6 is not expected to exceed \$223,041.84; and

WHEREAS, funds are available in the current budget in the Workers' Compensation Fund, budget code 676-99-900-900-0000-000-472-612240-4.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution 68,696-N.S. be amended so that the City Manager is authorized to pay the State of California, Department of Industrial Relations, Self-Insurance Plans invoice for Fiscal Year 2019 for Workers' Compensation Administration Revolving Fund Assessment; Uninsured Employers Benefits Trust Fund Assessment; Subsequent Injuries Benefits Trust Fund Assessment; Occupational Safety and Health Fund Assessment; Labor Enforcement and Compliance Fund; and Workers' Compensation Fraud Account Assessment for an additional amount of \$4,041.84 for a total amount not to exceed \$223,041.84.



Office of the City Manager

CONSENT CALENDAR

January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Contract: Siegel & Strain Architects for Design Services for the Cazadero Camp Jensen Dormitory Replacement Design

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Siegel & Strain Architects in an amount not to exceed \$158,000 to provide design services for the Cazadero Camp Jensen Dormitory Replacement Design Project.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the FY 2019 budget in the Camps Fund budget code 125-52-543-581-0000-000-461-612310 PRWEM16004. No other funding is required, and no other projects will be delayed due to this expenditure. The cost of this this contract is anticipated to be covered by insurance payments (partial payments received).

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley has owned Cazadero Camp in Sonoma County since 1927. In April of 2016, a landslide occurred at Cazadero Camp causing irreparable damage to the existing Jensen Dorm structure, Austin Creek Road and multiple trees. The hazardous trees were removed, Jensen Dormitory demolished and the debris removed, and the permanent landslide repair work (including repair of Austin Creek Road) completed. The final landslide recovery work is to design and construct a replacement of the Jensen Dormitory structure that was destroyed by the landslide.

BACKGROUND

The total cost estimate for the Cazadero Landslide Repair Project is \$2.1M. Project costs are anticipated to be covered by insurance.

On November 13, 2018 the City issued a request for proposals for architectural and engineering design services for the Cazadero Camp Jensen Dormitory Replacement Design Project (Spec No. 18-11209-C). The City received one proposal, from Siegel & Strain Architects. The City has determined that Siegel & Strain Architects are well suited to meet the City's needs for this Project, and insurance has accepted the proposed Siegel & Strain scope of work and budget as eligible for claim coverage.

ENVIRONMENTAL SUSTAINABILITY

This Project replaces a destroyed building. The replacement building will be designed to meet current building code, representing a significant improvement in energy and water efficiency compared to the prior structure. This project will comply with the City's Climate Action Plan in the following ways: increased energy efficiency in public buildings, and providing a public resource for community outreach and empowerment.

RATIONALE FOR RECOMMENDATION

The replacement of Jensen Dormitory is necessary to restore the capacity of Cazadero Camp, and the Project is insurance funded. The City does not have the in-house resources to complete design of the replacement structure.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, PRW, 981-6700  
Liza McNulty, Project Manager, PRW, 981-6437

Attachments:

1: Resolution



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

CONTRACT: SIEGEL & STRAIN ARCHITECTS FOR DESIGN SERVICES FOR THE CAZADERO CAMP JENSEN DORM REPLACEMENT DESIGN

WHEREAS, the City has owned the Cazadero Camp since 1927; and

WHEREAS, in April, 2016 a landslide destroyed the Jensen Dormitory; and

WHEREAS, on November 13, 2018 the City issued a Request for Proposals for design services for the Cazadero Camp Jensen Dormitory Replacement Design Project (Spec No. 18-11209-C) and has identified Siegel & Strain Architects as well-suited for the City's needs; and

WHEREAS, funding is available in the FY 2019 budget in the Camps Fund (Fund 125).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute a contract and any amendments with Siegel & Strain Architects in an amount not to exceed \$158,000 for design services for the Cazadero Camp Jensen Dormitory Replacement Design Project. A record signature copy of said agreements and any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Adopt a Mitigated Negative Declaration for the Berkeley Tuolumne Camp Permit (46690) Project

RECOMMENDATION

Adopt a Resolution adopting the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Plan (MMRP) for the Berkeley Tuolumne Camp Permit (46690) Project.

FISCAL IMPACTS OF RECOMMENDATION

There are no direct fiscal impacts associated with the adoption of mitigated negative declaration environmental documents. The Mitigated Negative Declaration for the City of Berkeley Tuolumne Camp Permit (46690) Project was prepared by 2M Associates under the contract number 7470E. Funding to complete the Tuolumne Camp Project Permit (No. 46690) was appropriated in budget code 125-52-543-583.0000-000-461-612310, Project Code PRWCP08001.

CURRENT SITUATION AND ITS EFFECTS

In accordance with the California Environmental Quality Act (CEQA), the City retained 2M Associates to prepare the Initial Study / Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Plan (MMRP) environmental documents to assess the environmental impacts of the proposed reconstruction and operation of Berkeley Tuolumne Camp. The MND determined that the project will have less than significant environmental impacts if specific mitigation measures are implemented. The specific mitigation measures are detailed in the attached Final Initial Study / Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan.

On August 30, 2018, the Draft MND was distributed to the State Clearinghouse, all regulatory agencies having jurisdiction over the Project, and interested stakeholders for the required thirty day public review period. On September 12, 2018, the MND was presented at the regular meeting of the Parks and Waterfront Commission. On October 2, 2018, the State Clearinghouse provided the City with comments received by the responding agencies, and confirmation that the City has complied with the State Clearinghouse review requirements for draft environmental document, pursuant to the

California Environmental Quality Act. A total of 11 written comment letters from both agencies and members of the public were received.

On December 10, 2018, the City published the Response to Comments and Final MND, which modified the Draft MND where appropriate, and notified all commenters of its availability for the required 10-day review period. During this final review period, clarifying questions from one commenter were received and responded to; no other comments on the Response to Comment and Final MND were received.

### BACKGROUND

Berkeley Tuolumne Camp, established in 1922, is a 15-acre property operated under a Special Use Permit with the US Forest Service (USFS). The camp has served primarily as a family camp, but also offered teen leadership programs, adult hiking camps, and private group rental opportunities. Prior to the fire, BTC had the capacity to host approximately 280 campers, 60 staff members, and 10 counselors-in-training at one time, and served over 4,000 campers each year. The major facilities at the Camp included a Dining Hall; a Recreation Hall, 77 small single-story wood-frame camper tent cabins; staff cabins; maintenance and storage structures; swimming areas; a bridge across the river; parking and loading areas, and electric, water supply, and wastewater utilities.

In August of 2013, the Rim Fire destroyed Berkeley Tuolumne Camp (BTC) and in December was declared a federal disaster. The majority of structures at BTC were destroyed by the fire. The property was covered by the City's insurance policy, and insurance proceeds will be the primary source of reconstruction funds. The City has also been awarded a Public Assistance Grant from the Federal Emergency Management Agency (FEMA) and California Office of Emergency Services (CalOES) to partially fund reconstruction.

Since the fire, the City has been working closely with the USFS to complete an updated master plan in order to rebuild Camp. On March 2, 2015, the City received a letter from the USFS formally accepting the City's conceptual proposal for Berkeley Tuolumne Camp rebuild, which includes expanding the Special Use Permit area to about 30 acres. On August 30, 2018, the USFS released its environmental documentation for the Project, which included a Draft Finding of No Significance.

The total Project budget estimate is approximately \$62M, which includes planning, design, permitting, environmental review, and construction. On April 4, 2017, the City Council funded the estimated City cost share of \$3.3 M (which includes the City's required FEMA grant matching funds). The City currently anticipates beginning construction in 2020, with a goal to re-open camp in 2022.

### ENVIRONMENTAL SUSTAINABILITY

The Mitigated Negative Declaration for the proposed project contains a comprehensive environmental assessment of the project. The assessment determined that the Project

will have a less-than significant impact on the environmental if the City implements specific mitigation measures. The Mitigation, Monitoring and Reporting Plan includes detailed roles, responsibilities, and methods for implementing and documenting compliance with the mitigation measures.

RATIONALE FOR RECOMMENDATION

The adoption of the Mitigated Negative Declaration for the proposed Tuolumne Camp Project Permit (No. 46690) will allow the City to complete the permitting process and move into the bidding phase of the Project in the fall of 2019.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Liza McNulty, Capital Improvement Program Manager, PRW, 981-6437

Attachments:

1: Resolution

Exhibit A: Berkeley Tuolumne Camp Permit (46690) Initial Study / Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan.

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

ADOPTING THE MITIGATED NEGATIVE DECLARATION (MND) AND MITIGATION MONITORING AND REPORTING PLAN (MMRP) FOR THE BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT

WHEREAS, the City operated the Berkeley Tuolumne Camp, a residential family camp, since 1922 on United States Forest Service land pursuant to a special use permit; and

WHEREAS, in August 2013, the Berkeley Tuolumne Camp was destroyed by the California Rim Fire; and

WHEREAS, in accordance with the California Environmental Quality Act (CEQA), the City retained 2M Associates to prepare an Initial Study / Mitigated Negative Declaration environmental documents and associated Mitigation Monitoring and Reporting Plan to assess the environmental impacts of the proposed reconstruction and operation of Berkeley Tuolumne Camp Project Permit (No. 46690); and

WHEREAS, the MND determined that the Project will have less than significant environmental impacts if specific mitigations measures are implemented; and

WHEREAS, the City has received and responded to comments from the public and regulatory agencies and revised the Draft Initial Study / Mitigated Negative Declaration where appropriate; and

WHEREAS, there are no direct fiscal impacts associated with the process to adopt mitigated negative declaration and environmental documents.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopts the Berkeley Tuolumne Camp Project Permit (No. 46690) Final Initial Study / Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Plan (Exhibit A) in accordance with the California Environmental Quality Act (CEQA).

Exhibits

A: City of Berkeley Tuolumne Camp Permit (46690) Project Initial Study / Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan.



Parks, Recreation &  
Waterfront Department

**NOTICE OF AVAILABILITY AND RELEASE OF RESPONSE TO COMMENTS AND FINAL MITIGATED  
NEGATIVE DECLARATION/INITIAL STUDY (MND/IS) FOR THE  
BERKELEY TUOLUMNE CAMP (46690) PERMIT PROJECT**

**TO:** All Interested Parties

**PROJECT NAME:** Berkeley Tuolumne Camp Permit (466690) Project

**PROJECT LOCATION:** 331585 Hardin Flat Road, Groveland, Tuolumne County, CA

**PROJECT SPONSOR:** City of Berkeley

**PROJECT DESCRIPTION:** The proposed Project would obtain a 30-year term Special Use Permit (SUP) from the Forest Service that will allow the City of Berkeley to reconstruct BTC facilities to current code and operate BTC much as it was prior to the Rim Fire. The new SUP would be expanded to approximately 30 acres (from its currently permitted 14 acres) and would include the Small Falls and Sugar Pine Trails that extend away from the main camp. About 14.5 acres of the permit area is proposed to be developed for parking, the main camp area, staff camp area, all support facilities and the Sugar Pine and Small Falls Trails. BTC would be designed to operate at a capacity that matches, but does not exceed, the pre-fire overnight staff and camper capacity of 360 individuals. The SUP would be issued for a term period of 30 years and may be renewed upon review and approval by the Forest Service. Because of the expanded 30-acre SUP area, a Forest Plan Direction amendment would be completed to accommodate the Camp.

**ENVIRONMENTAL REVIEW – DRAFT MND/IS:** The City of Berkeley issued a Draft Mitigated Negative Declaration/Initial Study (Draft MND/IS) for the Project on September 1, 2018 for a 30-day review period which concluded on October 1, 2018. The Draft MND/IS was sent to responsible agencies, organizations and individuals; and was posted on the City's website.

**ENVIRONMENTAL REVIEW OF FINAL MND/IS:** The review period for the Final MND/IS starts on December 11, 2018 and ends on December 21, 2018. All comments must be received by 5 pm on December 21, 2018 and sent to:

Liza McNulty, Program Manager  
City of Berkeley  
Parks, Recreation & Waterfront  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704

Preparation of the Responses to Comments has been overseen by the City's Parks, Recreation & Waterfront Department and the conclusions and recommendations made in the document represent the independent views and recommendations of the City. The Response to Comments and Final MND/IS is available on the City's website at:

[https://www.cityofberkeley.info/Parks\\_Rec\\_Waterfront/Recreation/Tuolumne\\_Camp.aspx](https://www.cityofberkeley.info/Parks_Rec_Waterfront/Recreation/Tuolumne_Camp.aspx).

**ADOPTION OF FINAL MND/IS:** The Berkeley City Council will consider adopting the Berkeley Tuolumne Camp Permit (46690) Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan on January 22, 2019 at its regular City Council Meeting held at 1231 Addison Street, Berkeley, CA 94702.





City of Berkeley  
Parks Recreation & Waterfront

# **CITY OF BERKELY TUOLUMNE CAMP (46690) PERMIT PROJECT**

## **RESPONSE TO COMMENTS**

December 2018

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OF  
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CAMP (46690) PERMIT PROJECT  
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## CHAPTER

## 1

INTRODUCTION

---

This Response to Comments document contains the public and agency comments received during the public review period for the *Berkeley Tuolumne Camp Permit (46690) Draft MND/IS* (MND/IS) and responses to each of those comments.

The MND/IS is an informational document intended to disclose to responsible agencies and the public the environmental consequences of approving and implementing the Berkeley Tuolumne Camp Permit (46690) (Project). All written comments received during the public review period (September 1, 2018 through October 1, 2018) on the Draft MND/IS are addressed in this Response to Comments document. A public hearing was held on the Project on September 12, 2018. Oral comments received during the public hearing are also addressed in this Response to Comments document.

The responses addressing public comments on the Draft MND/IS correct, clarify and supplement text in the Draft MND/IS as appropriate. Also included are text changes made at the initiative of the City of Berkeley (City), the Lead Agency. These changes (summarized in Chapter 2) do not alter the conclusions of the Draft MND/IS. Rather, they expand on or clarify those initial conclusions. This document has been prepared in conformance with the California Environmental Quality Act (Public Resources Code 21000, et seq. and California Code of Regulations, Title 14, Chapter 3, Section 15000, et seq.).

The City must file a Notice of Determination (NOD) within five working days after deciding to approve the Project with the Tuolumne County Clerk. The Tuolumne County Clerk will post the NOD which starts a 30-day statute of limitations on court challenges to the approval of the Project under CEQA (California Code of Regulations, Title 14, Chapter 3, Section 15075).

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## CHAPTER

## 2

TEXT CHANGES TO THE  
DRAFT MND/IS

## 2.1 INTRODUCTION

This chapter presents corrections, additions and revisions made to the Draft MND/IS initiated by the City, reviewing agencies, and the public. New text is indicated in underline and text to be deleted is reflected by ~~strike through~~. Text changes are presented in the section and page order in which they appear in the Draft MND/IS.

The changes made to this Draft MND/IS represent clarifications/amplifications of the analysis contained in the Draft MND/IS based on on-going review by City staff and consultants and do not constitute significant new information that, in accordance with Section 15088.5 of the *CEQA Guidelines* would trigger the need to recirculate portions or all of the Draft MND/IS.

## 2.1.1 TEXT CHANGES

Since publication of the Draft MND/IS, City staff working with the Project design team have refined elements of the BTC design. None of the changes to the Project Description alter any of the significance findings in the Draft Initial Study. Additionally, text changes address typographical errors, new information collected since publication of the Draft MND/IS and points of clarification in response to public comments.

Page MND-3: Mitigation Measure AIR-1 is clarified:

- AIR-1** A construction-phase Dust Control Plan (DCP) shall be prepared prior to the start of any Project construction activity. The DCP shall include, at a minimum, all basic emission control measures (listed below) ~~and any additional measures applicable to the project and necessary to reduce off-site migration of fugitive dust:~~

Page MND-4: Mitigation Measure AIR-2 is clarified:

- AIR-2** Acquire burn permits from the Tuolumne County Air Pollution Control District. The California Air Resources Board provides daily information on “burn” or “no burn” conditions. Burning shall be prohibited on “no burn” days. Design and implement burn plans to minimize particulate emissions. Notify the Groveland District Wildlife Biologist prior to pile burning to minimize disturbance to protected or sensitive species.

Page MND-5: Mitigation Measures BIO-5, BIO-6 and BIO-8 are clarified:

- BIO-5** Conduct a pre-construction plant survey the spring prior to Project construction. Flag and avoid new occurrences of sensitive plants. Notify the Groveland Ranger District Botanist to determine ~~course of action~~ any additional measures.
- BIO-6** ~~During breeding season (February 15 to September 15), c~~Conduct pre-construction nest surveys for migratory birds, California spotted owls, and northern goshawks within ¼ mile of construction activities ~~implemented during the breeding season (February 15 to September 15)~~. If active nests are discovered, protective measures such as nest buffers or limited operations would be implemented in consultation with a USFS biologist.
- BIO-8** If any Forest Service Sensitive (FSS) or Federal-listed terrestrial wildlife species are discovered within the BTC project site area prior to or during ground disturbance and construction activities, such activities shall cease and not restart until USFS biologist certifies that continued construction would not cause any harm to listed species ~~a USFS biologist shall be contacted for recommendations as to how to proceed~~.

Page MND-10: Mitigation Measure LUP-1 is clarified:

- LUP-1** ~~Submit all plans to~~Obtain confirmation from the Forest Service ~~for consistency review that the Project is consistent with the Forest Plan Direction and~~ prior to Camp construction.

Page IS-2: The Project Background of the Draft Initial Study is revised to provide a more detailed description of the pre-fire BTC facilities and operations:

Founded in 1922, the BTC was used as a family institution since its inception. Though not the first public municipal camp established in the Stanislaus National Forest, it is the only camp dating to the 1920s that remained in continuous use by a single municipality until the Rim Fire. Recreational structures at BTC prior to the Rim Fire included 78 Tent Cabins, 25 staff housing structures, Restroom / Shower Buildings, a Dining Hall, Recreation Hall, Nature Center, Stage and Amphitheater, Office, Store, Sports Courts, Archery Range, Seasonal Weir and Swimming Hole, Kiddie Kamp and Sauna. The pre-fire BTC facilities are shown in Figure 2 (refer to Map Package). Infrastructure on site included pedestrian bridges, driveway and parking, electric and phone service, multiple propane tanks, water intake and treatment facilities, and wastewater collection and treatment systems. BTC generally operated at its full capacity of 300 campers and 60 staff from late May through early September (set up and close down activities by staff typically began in April and were completed by November). The primary program at BTC for over 90 years prior to the Rim Fire was 'Family Camp', a multigenerational program that included arts and crafts and guided nature exploration, weekly campfires and talent shows, sports and swimming, and a weekly show performed by staff for Campers. In addition to Family Camp, BTC also operated

~~youth, teen leadership, and adult 50+ programs. For 91 years it has been enjoyed by thousands and has become a generational tradition for many Berkeley families.~~

Page IS-5: Section 3.3 Proposed Project Program of the Draft Initial Study is revised to correct typographical errors, and to clearly indicate the Special Use Permit area, requirements, and the proposed operating period of the reconstructed BTC:

~~The proposed Project would obtain a 30-year term Special Use Permit (SUP) from the Forest Service that will allow the City to reconstruct Camp facilities to current code and operate the Camp much as it was prior to the Rim Fire. The new SUP would be expanded to approximately 30 acres and would include two trails known as the Small Falls and Sugar Pine Trails that extend away from the main camp. About 14.5 acres of the permit area is proposed to be developed for parking, the main camp area, staff camp area, all support facilities and the Sugar Pine and Small Falls Trails. In order to support all Camp facilities and program operations, including protection of cultural resources, incorporation of the Sugar Pine and Small Falls Trails, and all infrastructure requirements, the new Permit Area will be approximately 30 acres. However, not all of that 30 acres will involve facility development. About 14.5 acres of the permit area is proposed to be developed for access from Hardin Flat Road, the main camp area south of the river, parking and the staff camp area north of Hardin Flat Road, accessible paths of travel, trails and the leach field area. The remainder of the area will consist of undeveloped forest lands that serve as the setting for the Camp.~~

~~Prior to the Rim Fire, BTC typically operated at capacity. BTC would be designed to operate at a capacity that matches, but does not exceed, the pre-fire overnight staff and camper capacity/occupancy of 360 individuals. BTC would operate during the same period as it did before the fire, generally between April and November inclusive of Camp set-up and take-down. BTC would be closed during the winter months. The SUP would be issued for a term period of 30 years and may be renewed upon review and approval by the Forest Service. Figure 3 (map package) illustrates the BTC permit areas. Because of the expanded 30-acre SUP area, a Forest Plan Direction amendment would be completed to accommodate the Camp.~~

~~The City's reconstruction of BTC is consistent with Forest Service policy encouraging organization camp facilities and programs that promote environmental education, hiking, fishing and similar forest-related activities (FSH 2709.14, Policy 13.2). The reconstruction is also aligned with Forest Service objectives to provide, under special use authorization, sufficient suitable facilities and services that supplement or complement those provided by the private sector, state and local government on private land, and the Forest Service on NFS land to meet public needs to facilitate the use, enjoyment, understanding and appreciation of natural resource settings in National Forests (FSM 2340.2).~~

~~Working in partnership, the Forest Service and the City developed the following project understandings: 1) the Project will result in no increase in camper capacity/occupancy over~~



pre-fire capacity/occupancy; 2) the Project will be consistent with current laws and regulations including E.O. 11988, Floodplain Management (FEMA 1977a) and consistency with the Forest Plan; and 3) the Project will provide for the protection of all cultural resources. In addition the Camp Special Use Permit will require the City to comply with applicable laws, codes, and ordinances. Tuolumne County will review and issue permits for the project. The new Dining Hall foundation would be constructed outside the existing 100-year floodplain and the finished floor elevation of the hall and associated decking, while perhaps cantilevered, would be above the 100-year floodplain.

Figure 4 (map package) illustrates the overall Facility Concept and Figure 5 illustrates the Central Camp Facilities Concept Plan.

Page IS-9: Table 1 under Project Description is revised to present the green building features incorporated into the Project:

|                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                         |
|---------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| Revegetation and erosion control (Map Package; Figure 2.01-5) | <ul style="list-style-type: none"> <li>Erosion control mulching; liner and container planting; plant protection and hand weeding; temporary irrigation or hand watering for establishment period</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 6 acres                                                                                                                 |
| <b>Green Building Features</b>                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                         |
| <u>Operating Energy</u>                                       | <ul style="list-style-type: none"> <li><u>Installation of infrastructure for seven future electrical vehicle charging stations.</u></li> <li><u>Installation of infrastructure for future roof-mounted photovoltaic panels at Dining Hall and Recreation Hall</u></li> <li><u>Lighting systems incorporate high efficiency LED fixtures. Exterior lighting will be minimal. Lighting controls turn lights off when not in use</u></li> <li><u>Windows and screen openings located to allow illumination of interior spaces with minimal use of electrical lighting</u></li> <li><u>All buildings designed for passive cooling and heating. No mechanical cooling systems. Mechanical heating systems installed only at the Dining Hall and Manager’s Cabin, minimized or eliminated elsewhere to the maximum extent accepted by jurisdiction having authority.</u></li> </ul>                                                                                                                                            | <u>Most of the tent cabins will not have lights, walls, roofing, windows, mechanical heating/cooling or insulation.</u> |
| <u>Passive Cooling</u>                                        | <ul style="list-style-type: none"> <li><u>Buildings and porches oriented to reduce solar heat gain at walls, windows and screen openings</u></li> <li><u>Slider/double hung windows and large screened openings located to allow maximum natural ventilation</u></li> <li><u>Large louvers located on the highest point of Dining Hall and Recreation Hall ceilings will exhaust hot air. Movement of air will be assisted by ceiling fans</u></li> <li><u>Corrugated metal roofing installed to allow heat to be exhausted through corrugation channels and ridge vent to reduce radiant transfer to roofing assembly and building interior</u></li> <li><u>Walls and roof insulated to reduce heat gain and continuous insulation is used at roof to reduce thermal bridging through framing members</u></li> <li><u>All windows and glass doors have dual pane insulated glazing</u></li> <li><u>Concrete slab-on-grade buildings partially dug into grade to reduce temperature swing during hot days</u></li> </ul> |                                                                                                                         |
| <u>Passive Heating</u>                                        | <ul style="list-style-type: none"> <li><u>Joints and junctures sealed to reduce heat loss.</u></li> <li><u>Walls, roof and floor insulated and dual pane insulated glazing to reduce heat loss</u></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                         |

|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Embodied Carbon | <ul style="list-style-type: none"> <li>• Structural framing wood dimensional and engineered lumber</li> <li>• <u>All redwood dimensional lumber, siding and trim certified as sustainably harvested from a well-managed forest</u></li> <li>• <u>Use of concrete kept to minimum: building retaining walls integrate slab-on-grade to reduce large footings; site retaining walls built from dry-stacked boulders in lieu of concrete with a maximum height of 8 feet</u></li> <li>• <u>Plastic foam roof insulation specified with pentane or CO2 blowing agents</u></li> </ul> |  |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

Page IS-21: To avoid confusion regarding the regulatory setting and jurisdictions having authority, text is edited under Section 7, Agriculture and Forestry Resources, Section 2a:

- a) **Would the project convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps and prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?**

The proposed BTC permit area is designated Public under the Tuolumne County General Plan (County of Tuolumne 1996) and Public under the Tuolumne County Ordinance Code (County of Tuolumne). ~~The “Public” designation is assigned to lands owned by public agencies, such as USFS, and are exempt from Tuolumne County land use regulations.~~ The BTC permit area is within the SNF and contains no farmlands. As a result, the Project would not convert any Farmland.

Page IS-25: Section 3 Air Quality, Impact Discussion, third sentence on page 25 is deleted for clarity:

~~With Project completion, BTC would have air pollutant emissions less than the Camp’s pre-Rim Fire emissions because the new facilities would be built according to the requirements of current more energy-efficient building codes.~~

Pages IS-28-29: For clarity, Mitigation Measure AIR-1 and AIR-2 are revised:

- AIR-1** A construction-phase Dust Control Plan (DCP) shall be prepared prior to the start of any Project construction activity. The DCP shall include, at a minimum, all basic emission control measures (listed below) ~~and any additional measures applicable to the project and necessary to reduce off-site migration of fugitive dust.~~
- AIR-2** Acquire burn permits from the Tuolumne County Air pollution Control District. The California Air Resources Board provides daily information on "burn" or "no burn" conditions. Burning shall be prohibited on “no burn” days. Design and implement burn plans to minimize particulate emissions. Notify the Groveland District Wildlife Biologist prior to pile burning to minimize disturbance to protected or sensitive species.

Page IS-33: The breeding season of the California Spotted Owl contains a typographical error and is corrected:

The breeding cycle of the California spotted owl is sensitive to disturbance extends from mid-February to mid or late-~~August~~. ~~September~~.

Page IS-43: For clarity, Mitigation Measures BIO-5, BIO-6 and BIO-8 are revised:

- BIO-5** Conduct a pre-construction plant survey the spring prior to Project construction. Flag and avoid new occurrences of sensitive plants. Notify the Groveland Ranger District Botanist to determine ~~course of action~~ any additional measures.
- BIO-6** ~~During the breeding season (February 15 to September 15),~~ conduct pre-construction nest surveys for migratory birds, California spotted owls, and northern goshawks within ¼ mile of construction activities ~~implemented during the breeding season (February 15 to September 15)~~. If active nests are discovered, protective measures such as nest buffers or limited operations would be implemented in consultation with a USFS biologist.
- BIO-8** If any Forest Service Sensitive (FSS) or Federal-listed terrestrial wildlife species are discovered within the BTC project site area prior to or during ground disturbance and construction activities, such activities shall cease and not restart until USFS biologist is consulted, recommended measures are implemented, and USFS biologist certifies that continued construction would not cause any harm to listed species. ~~a USFS biologist shall be contacted for recommendations as to how to proceed.~~

Pages IS 52-53: To clarify Project GHG emissions would be less than significant, text is added to Section 7 Greenhouse Gas Emissions Subsections 7a and 7b of the Draft Initial Study:

**a) Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?**

The California Emissions Estimator Model (CalEEMod, Version 2016.3.2) was used to quantify the proposed Project's GHG emissions ~~associated with Project construction activities and Project operation~~.

For Project construction, GHG emission rates for state-average construction equipment (as included in the CalEEMod database) were applied to Project-specific construction activities and equipment (as listed in Chapter 2 Project Description Table 3). Applying this model to the Total Project construction GHG emissions would be 314.7 metric tons of CO<sub>2e</sub> and its annual emissions in the first year of operation would be 82.6 metric tons of CO<sub>2e</sub> (assuming that all construction activity would occur in the year 2019, a worst-case scenario because the state-average construction fleet will emit less GHG emissions in subsequent future years). No California air district has set a CEQA significance threshold for construction GHG emissions. Neither the Tuolumne County Air Pollution Control District nor the San Joaquin Valley Air Pollution Control District have quantitative significance thresholds for operational GHG emissions

For Project operation, CalEEMod was initialized according to its land use type/size (i.e., number of family/staff tent cabins to be built with provision for electricity) and with Project-specific motor vehicle trips (see Section 16 Transportation and Circulation) and Project-specific water use data (see Section 18 Utilities and Service Systems). The model's interim total GHG emissions were adjusted further in proportion to the Project's planned operation only during the summer season (15 weeks, rather than a full year's 52 weeks). The adjusted total Project annual operational GHG emissions as shown in Table A would be 82.6 metric tons of CO<sub>2e</sub>. Both Project construction and operational GHG emissions are well below the quantitative thresholds adopted by other California Air Districts and would comply with adopted GHG reduction plans, as discussed in Subsection 7b below), thus, Project GHG emissions impacts are less than significant.

**TABLE A: PROJECT ANNUAL OPERATIONAL GREENHOUSE GAS EMISSIONS  
(metric tons/year)**

| <b>Project GHG Source</b>      | <b>CO<sub>2</sub></b> | <b>CH<sub>4</sub></b> | <b>N<sub>2</sub>O</b> | <b>CO<sub>2e</sub></b> |
|--------------------------------|-----------------------|-----------------------|-----------------------|------------------------|
| <u>Area</u>                    | <u>&lt; 0.1</u>       | <u>0</u>              | <u>0</u>              | <u>&lt; 0.1</u>        |
| <u>Energy Use</u>              | <u>41.7</u>           | <u>&lt; 0.1</u>       | <u>&lt; 0.1</u>       | <u>41.9</u>            |
| <u>Motor Vehicles</u>          | <u>32.8</u>           | <u>&lt; 0.1</u>       | <u>&lt; 0.1</u>       | <u>32.9</u>            |
| <u>Solid Waste Disposal</u>    | <u>1.2</u>            | <u>0.1</u>            | <u>0</u>              | <u>2.9</u>             |
| <u>Water Use</u>               | <u>3.2</u>            | <u>0.1</u>            | <u>&lt; 0.1</u>       | <u>5.0</u>             |
| <b>Total</b>                   | <b>78.9</b>           | <b>0.1</b>            | <b>&lt; 0.1</b>       | <b>82.6</b>            |
| <b>Significance Thresholds</b> |                       |                       |                       | <b>1,100</b>           |
| <b>Significant Impact?</b>     |                       |                       |                       | <b>No</b>              |

Source: CalEEMod (Version 20163.2) initialized with Project-specific parameters relating to its land use type/size, motor vehicle trip generation, water use and its planned operation only during summer months.

Note: Quantitative thresholds adopted by other California air districts range from 1,100 – 3,000 MT CO<sub>2e</sub> per year. The minimum quantitative threshold of 1,100 MT is used for this analysis.

**b) Would the project conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?**

GHG emissions from the reconstructed BTC would not exceed its pre-Rim Fire level. The Project would reconstruct BTC utilizing green building measures (see Table 1 in the Project Description). As presented in Table A, Project annual operational GHG emissions would be below the lowest established California air district significance threshold. Thus, the Project would not conflict with the goals of AB 32 or any other State climate change prevention or adaptation strategies, a less than significant impact.

Pages IS 64-65: For clarity regarding Stormwater drainage systems, text is edited under Section 2, Hydrology and Water Quality, Section 9e:

Storms that exceed the rainfall intensities of the ten-year design storm return frequency would exceed the capacity of the storm drain system. ~~Major storm flow patterns would be investigated to ensure that storms that exceed the~~ Project grading would ensure that flows in excess of the design capacity of the storm drainage facilities are safely channeled directed to disposal in the South Fork Tuolumne River.

Page IS 74: Mitigation Measure LUP-1 is clarified:

**LUP-1** ~~Submit all plans to~~ Obtain confirmation from the Forest Service for consistency review that the Project is consistent with the *Forest Plan Direction* and prior to Camp construction.

Page IS 75: Text is added to clarify mineral resources on the site.

**a) Would the project result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?**

The proposed BTC SUP area is within the SNF and the *Forest Plan Direction* (USDA 2017) does not identify the Project site as an area containing mineral resources. The Project would not prevent the reasonable access to the South Fork Tuolumne River for valid mining claimants to conduct authorized mining activities. The Project would not materially interfere with any current or reasonably foreseeable mining operations.

## CHAPTER

## 3

COMMENTS AND RESPONSES

---

This chapter contains the comment letters received in response to the Draft MND/IS during the public review period (September 1, 2018 through October 1, 2018). Each comment letter is numbered, each comment is further identified by sub-number and responses are provided for each comment. The responses amplify or clarify information provided in the Draft MND/IS and/or refer the reader to the appropriate places in the document where the requested information can be found. Comments that are not directly related to environmental issues (e.g., opinions on the merits of the project unrelated to its environmental impacts) may either be discussed or noted for the record. Where text changes in the Draft MND/IS are warranted based on comments received, updated project information, or information provided by agencies, those changes are included in the response to comment, and are also listed in Chapter 2 of this Response to Comments document.

The changes to the analysis contained in the Draft MND/IS represent clarifications/amplifications and do not constitute significant new information. In accordance with Section 15088.5 of the *CEQA Guidelines*, recirculation of the Draft MND/IS is not required.

Table 1 presents a list of state and local agencies and individuals providing written comments on the Draft MND/IS and oral comments heard during the public hearing for the proposed Project.

TABLE 1: LIST OF COMMENTERS

| Letter Number                                            | Date of Letter     | Commenter                                                     |
|----------------------------------------------------------|--------------------|---------------------------------------------------------------|
| <b>State and Local Agencies</b>                          |                    |                                                               |
| 1                                                        | September 24, 2018 | Department of Transportation                                  |
| 2                                                        | October 2, 2018    | Central Valley Regional Water Quality Control Board           |
| <b>Organizations</b>                                     |                    |                                                               |
| 3                                                        | September 10, 2018 | Central Sierra Environmental Resource Center                  |
| 4                                                        | September 25, 2018 | Friends of Berkeley Tuolumne Camp                             |
| <b>Individuals</b>                                       |                    |                                                               |
| 5                                                        | September 11, 2018 | Mariko H. Roberts                                             |
| 6                                                        | September 12, 2018 | Cameron Woo                                                   |
| 7                                                        | September 17, 2018 | Lucinda Chipponeri & family                                   |
| 8                                                        | September 18, 2018 | Carol Hart                                                    |
| 9                                                        | October 1, 2018    | Claudia Kawczynska, Member of Parks and Waterfront Commission |
| 10                                                       | October 1, 2018    | Peggy O'Day                                                   |
| 11                                                       | October 1, 2018    | Cameron Woo                                                   |
| <b>Public Hearing Oral Comments – September 12, 2018</b> |                    |                                                               |
|                                                          |                    | Phil Coffin                                                   |
|                                                          |                    | Richard Thomison                                              |
|                                                          |                    | Cameron Woo                                                   |
|                                                          |                    | Kathy Brown                                                   |

### 3.1 STATE AND LOCAL AGENCIES



**DEPARTMENT OF TRANSPORTATION**

DISTRICT 10 PLANNING DIVISION

P.O. BOX 2048, STOCKTON, CA 95201

(1976 E. DR. MARTIN LUTHER KING JR. BOULEVARD 95205)

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www.dot.ca.gov



*Making Conservation  
a California Way of Life.*

September 24, 2018

**10-TUO-120-Post Mile (PM) R50.350  
City of Berkeley Tuolumne Camp  
Permit 46690 Project  
Initial Study (IS) and Mitigated Negative  
Declaration (MND)  
State Clearing House (SCH#) 2018082070**

Ms. Liza McNulty, PE  
Capital Improvement Program Manager  
City of Berkeley  
Parks, Recreation & Waterfront Department  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704

Dear Ms. McNulty:

The California Department of Transportation (Caltrans) appreciates the opportunity to review the Initial Study (IS) and Mitigated Negative Declaration (MND), State Clearing House (SCH#) 2018082070 for the City of Berkeley Tuolumne Camp Permit (46690) Project. The proposed project is the reconstruction of the Berkeley Tuolumne Camp which was destroyed during the 2013 Rim Fire. The project would maintain capacity of Camp facilities at pre-Rim Fire condition, that is 360 campers and staff, and would provide new facilities meeting current building codes and environmental standards. The project is located at the Stanislaus National Forest, Groveland Ranger District, 331585 Hardin Flat Road, Groveland, Tuolumne County, California.

Caltrans has reviewed the IS/MND and has the following comments:

- 1-1 The proposed site plan Initial Study states that the proposed project will only have access on Hardin Flat Road. The address of the campground has a closer proximity and more probability of using Golden Arrow Road to its access. Will it be signed to indicate the camp users will only use Hardin Flat Road as its access? Any proposed directional signs that may need to be installed by the applicant must be outside of the State highway right of way (R/W) and in accordance with State Outdoor Advertising Program regulations and Federal laws.

Ms. Liza McNulty  
September 24, 2018  
Page 2

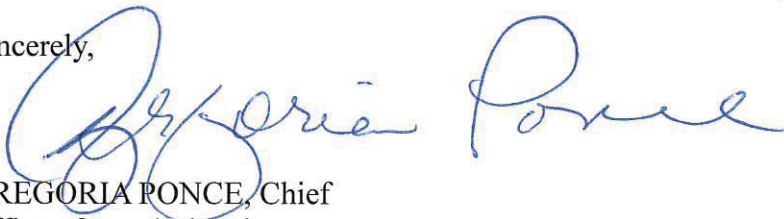
1-2 If work is to occur within Caltrans R/W and during bird nesting season (Feb 15 – September 1), the project proponent will be required to complete a pre-construction bird survey. Rare plants have been previously identified near the project area (slender-stemmed monkeyflower and Small's southern clarkia), thus, if work will occur in Caltrans R/W, a pre-construction botanical survey will need to be completed and survey results will need to be submitted to a Caltrans biologist for review.

1-3 If any project construction or temporary traffic control activities will encroach into Caltrans R/W, the project proponent must submit an application for an Encroachment Permit to the Caltrans Permit Office. Appropriate environmental studies must be submitted with this application. These studies will include an analysis of potential impacts to any cultural sites, biological resources, hazardous waste locations, and/or other resources within Caltrans R/W at the project site(s). CEQA documentation with supporting technical studies required when submitting the Encroachment Permit.

1-4 Caltrans recommends that traffic impact fees be collected for future multimodal improvements to reduce vehicle miles traveled (VMT) and to mitigate cumulative impacts to the State Highway System

If you have any questions or would like to discuss these comments, please contact me at (209) 948-7325 (e-mail: [gregoria.ponce@dot.ca.gov](mailto:gregoria.ponce@dot.ca.gov)).

Sincerely,



GREGORIA PONCE, Chief  
Office of Rural Planning

- c: David Gonzalves, Director, Tuolumne County Community Resources Agency
- Darin Grossi, Executive Director Tuolumne County Transportation Council
- Office of Planning and Research - State Clearing House

**Letter #1 Response: Department of Transportation**

- 1-1 As stated on page 4 of the Draft Initial Study, vehicle access to Berkeley Tuolumne Camp (BTC) is from Hardin Flat Road. Campers would generally be traveling east on State Highway 120 from the Bay Area. Hardin Flat Road is closer and provides direct access to BTC. No signs are proposed on Highway 120 or within the State highway right of way. Two signs are proposed within the Hardin Flat Road right-of-way going both directions to announce entrance into the BTC permit area, and other signs will face Hardin Flat Road at each of the Camp entry drives.
- 1-2 The Project is not anticipated to result in any construction or temporary traffic control activities within the right-of-way of State Highway 120. However, if it becomes necessary for construction activity within the Caltrans right-of-way, the Initial Study identifies mitigation measures to reduce potential impacts to nesting birds (Initial Study page 41 and page 43) and sensitive plants (Draft Initial Study page 38 and page 43).
- 1-3 As stated in Response 1-2 above, it is not anticipated the Project will require any construction activity within the Caltrans right-of-way. However if it becomes necessary for Project-related construction activities within the Caltrans right-of-way, the City will submit an Encroachment Permit application with required supporting documentation to Caltrans.
- 1-4 In response to Senate Bill 743 (SB 743) the Office of Planning & Research (OPR) has updated the California Environmental Quality Act (CEQA) Guidelines to include new transportation-related evaluation metrics. Draft guidelines were developed in August 2014, and updated in January 2016 based on public comments. OPR released final proposed CEQA Guidelines and a Technical Advisory on Evaluating Transportation Impacts on November 27, 2017. The final proposed CEQA Guidelines include a new Section 15064.3 on Vehicle Miles Travelled (VMT) addressing criteria for analyzing transportation impacts. Section 15064.3 states the application of the criteria do not take effect until January 1, 2020 unless the lead agency adopts them earlier. Neither Tuolumne County nor the Tuolumne County Transportation Council (TCTC), the state-designated Regional Transportation Planning Agency, has established any standards, thresholds or impact fees for VMT. No determination on the significance of VMT impacts was made for the Project since none is legally required.

clear

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EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

Governor's Office of Planning & Research

SEP 28 2018

STATE CLEARINGHOUSE

24 September 2018

Liza McNulty  
City of Berkeley, Parks Recreation and Waterfront  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704

CERTIFIED MAIL  
7014 3490 0001 3008 4194

**COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT, SCH# 2018082070, TUOLUMNE COUNTY**

Pursuant to the State Clearinghouse's 31 August 2018 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the City of Berkeley Tuolumne Camp Permit (46690) Project, located in Tuolumne County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

**I. Regulatory Setting**

**Basin Plan**

2-1

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases,

KARL E. LONGLEY ScD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues.

For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:  
[http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/).

### **Antidegradation Considerations**

2-2

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Policy is available on page IV-15.01 at:  
[http://www.waterboards.ca.gov/centralvalleywater\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalleywater_issues/basin_plans/sacsjr.pdf)

In part it states:

*Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.*

*This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.*

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

## **II. Permitting Requirements**

2-3

### **Construction Storm Water General Permit**

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan

(SWPPP).

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml).

#### **Phase I and II Municipal Separate Storm Sewer System (MS4) Permits<sup>1</sup>**

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/storm\\_water/municipal\\_permits/](http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/).

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/phase\\_ii\\_municipal.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml)

2-4

#### **Industrial Storm Water General Permit**

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ.

For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/storm\\_water/industrial\\_general\\_permits/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml).

2-5

#### **Clean Water Act Section 404 Permit**

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACOE). If a Section 404 permit is required by the USACOE, the Central Valley Water Board will review the permit application to ensure

<sup>1</sup> Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACOE at (916) 557-5250.

2-6

#### **Clean Water Act Section 401 Permit – Water Quality Certification**

If an USACOE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

2-7

#### **Waste Discharge Requirements – Discharges to Waters of the State**

If USACOE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the Water Quality Certification and WDR processes, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/help/business\\_help/permit2.shtml](http://www.waterboards.ca.gov/centralvalley/help/business_help/permit2.shtml).

2-8

#### **Dewatering Permit**

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Risk General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Risk Waiver)

R5-2013-0145. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Risk General Order and the application process, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0003.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf)

For more information regarding the Low Risk Waiver and the application process, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/waivers/r5-2013-0145\\_res.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2013-0145_res.pdf)

2-9

### **Regulatory Compliance for Commercially Irrigated Agriculture**

If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program. There are two options to comply:

1. **Obtain Coverage Under a Coalition Group.** Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board's website at: [http://www.waterboards.ca.gov/centralvalley/water\\_issues/irrigated\\_lands/for\\_growers/apply\\_coalition\\_group/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/for_growers/apply_coalition_group/index.shtml) or contact water board staff at (916) 464-4611 or via email at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).
2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 10-100 acres are currently \$1,084 + \$6.70/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands Regulatory Program, call the Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).

### **Low or Limited Threat General NPDES Permit**

2-10

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Dewatering and Other Low Threat Discharges to Surface Waters* (Low Threat General Order) or the General Order for *Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water*



City of Berkeley Tuolumne  
Camp Permit (46690) Project  
Tuolumne County

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(Limited Threat General Order). A complete application must be submitted to the Central Valley Water Board to obtain coverage under these General NPDES permits.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0074.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0074.pdf)

For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0073.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0073.pdf)

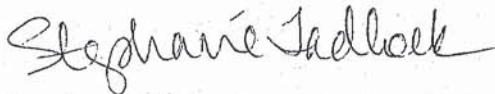
**NPDES Permit**

2-11

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit.

For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/help/business\\_help/permit3.shtml](http://www.waterboards.ca.gov/centralvalley/help/business_help/permit3.shtml)

If you have questions regarding these comments, please contact me at (916) 464-4644 or [Stephanie.Tadlock@waterboards.ca.gov](mailto:Stephanie.Tadlock@waterboards.ca.gov).



Stephanie Tadlock  
Senior Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento

**Letter #2 Response: Central Valley Regional Water Quality Control Board**

- 2-1 Comment noted. The Project is located in the South Fork Tuolumne Hydrologic Unit (Unit 536.80 of the San Joaquin Hydrologic Basin Planning Area). The goals and policies of the Water Quality Control Plan for the San Joaquin River Basin (CVRWQCB Resolution No. R5-2013-0098) and other applicable Basin Plan policies will be addressed in all permit applications to the Board.
- 2-2 Comment noted. The Project is being planned and designed to assure that existing water quality will be maintained to not affect present and anticipated beneficial use of the waters of the South Fork Tuolumne River and will not result in water quality less than that prescribed in the Board's policies as referenced in State Water Board Resolution 68-16. This includes a Project design and operations where no waste or increased volume or concentration of waste will be discharged into the South Fork Tuolumne River. The Project will meet waste discharge requirements of Tuolumne County in terms of the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.
- 2-3 The City of Berkeley is required by the US Forest Service as part of the City's Special Use Permit to obtain all necessary regulatory permits for the reconstruction of the Camp, including a Construction General Permit. The hydrology section of the Draft MND/IS and Appendix A Tables A-1 and A-2 review the steps, criteria and best management practices that will be followed to manage water during construction and operations of the Camp to protect the water quality of the South Fork Tuolumne River.
- As noted in the Draft MND/IS, at a minimum this will involve Water Quality Certification and coverage under the National Pollutant Discharge Elimination System (NPDES) construction general permit for storm water discharge under Section 401(A)(1) of the Clean Water Act and the Porter-Cologne Water Quality Control Act of 1975. The City will work with Central Valley Regional Water Quality Board staff to determine if additional permits are required and will submit the appropriate applications once detailed design is underway
- 2-4 Not applicable. The Camp is located in the Stanislaus National Forest, not a municipality, and is not an industrial use.
- 2-5 As noted in the Draft MND/IS, a Section 404 permit from the USACOE will be obtained.
- 2-6 As noted in the Draft MND/IS, a Water Quality Certification will be obtained from the Board. The City will work with Central Valley Regional Water Quality Board staff to obtain the Certification and determine if additional permits are required and will submit the appropriate applications once detailed design is underway
- 2-7 Not applicable. The Project includes jurisdictional waters of the United States.

- 2-8 It is not known at this time if during construction there will be any dewatering to be discharged to the land. If during detailed design that is found to be the case, then a Low-risk General Order application will be made.
- 2-9 Not applicable. The Project is not commercial irrigated agriculture.
- 2-10 The City of Berkeley is required by the US Forest Service as part of the City's Special Use Permit to obtain all necessary regulatory permits for the reconstruction of the Camp. As noted in the Draft MND/IS, at a minimum this will involve Water Quality Certification and coverage under the National Pollutant Discharge Elimination System (NPDES) construction general permit for storm water discharge under Section 401(A)(1) of the Clean Water Act and the Porter-Cologne Water Quality Control Act of 1975. The City will work with Central Valley Regional Water Quality Board staff to identify what type of NPDES permit is needed and if additional permits are required and will submit the appropriate applications once detailed design is underway.
- 2-11 Refer to Response 2-10.

## 3.2 ORGANIZATIONS



**Central Sierra Environmental Resource Center**  
Box 396, Twain Harte, CA 95383 • (209) 586-7440 • fax (209) 586-4986  
Visit our website at: [www.cserc.org](http://www.cserc.org) or contact us at: [johnb@cserc.org](mailto:johnb@cserc.org)

September 10, 2018

Liza McNulty, Program Manager  
City of Berkeley  
Parks Recreation & Waterfront  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704

**Comments on the IS/MND for the Reconstruction of the Berkeley Tuolumne Camp  
and a 30-year Permit for the City of Berkeley Tuolumne Camp**

The following comments are submitted in response to the Berkeley Tuolumne Camp Initial Study/Mitigated Negative Declaration and the associated request for comments by the Stanislaus National Forest concerning the 30-year permit to the City of Berkeley to reconstruct and operate the Camp. While our staff has reviewed the entire Initial Study and Mitigated Neg Dec, our purpose with these comments is not to critique insignificant points or to take up agency staff time on points that don't really matter. Accordingly, we are focusing on a few main points.

**BACKGROUND FOR COMMENTS**

**Our staff emphasizes that we support the reconstruction of the Berkeley Tuolumne Camp and the wide range of recreational, social, and educational opportunities that the Camp provided** when it was functioning. Many thousands of visitors have had enjoyable vacations and social interactions with other families and individuals staying at the Camp prior to its near total destruction by the Rim Fire. CSERC accepts the reality that while the river corridor area and adjacent habitat will inarguably lose some wildlife, watershed, and scenic value if a major camp development is allowed to be reconstructed on the site, we understand that the magnitude of visitors served and the quality of the experience provided by the Camp likely justify the diminishment of wildlife, watershed, and scenic values.

**THE EXTENT OF PRIOR FACILITIES DOES NOT MINIMIZE NEED FOR PROJECT CONSIDERATION**

CSERC agrees that, in general, much of what is proposed as this project is primarily replacement of what was there prior to the Rim Fire. For purposes of planning to meet the requirements of both CEQA and NEPA, it is important to analyze what is actually in need of environmental review. In this instance, based strictly upon a review of the IS/MND, it appears that the City of Berkeley proposes to gain approval for restoring/re-operating the previous Camp and to allow everything to be "replaced" more or less consistent with past policies and planning requirements. With these comments, CSERC asserts that as part of the CEQA process as well as the Forest Service permit analysis, there should be a clear assessment of which of the previous sited facilities would not likely be allowed in their current location if this was a new development application. It is necessary to assess whether this overall site is even the right location for a Camp serving 360 visitors. When reviewing the Forest Service EA for this same project through NEPA analysis, it is very apparent that key comparison assessments and considerations were carefully

3-1

made. As a result, **the EA spells out that all tent cabins, staff cabins, the Dining Hall, and sanitary facilities and potable water treatment and distribution utilities that were located previously within the 100-year floodplain will now be relocated out of the floodplain. It is not readily apparent from reading the IS/MND if those same requirements are mandated.** If they are, then the IS/MND is responsive to the environmental risks and the potential significant impacts. It will be compliant with current federal policies and requirements. However, **if the IS/MND does not contain those same requirements (such as relocating facilities and infrastructure out of the 100-year floodplain), then the IS/MND is deficient and needs to incorporate the proposed action adjustments to facilities and their location as is required by the EA's Alternative 1 (the Proposed Action) - pg 100.**

3-2

With its high fire risk, its risk of flood events, and its lack of public water or sewer, the BTC site would be unlikely to be approved for a new Berkeley Tuolumne Camp large-scale development if there was not already the prior, historic use at this location. At the least, current Forest Service or other applicable regulatory requirements should be adhered to if approval is to be gained for a replacement BTC.

As the IS/MND is currently written, however, CSERC asserts that the question of whether to allow (or not allow) all of the previous facilities and uses previously established on the pre-fire site is not adequately addressed in this Initial Study/Mitigated Neg Dec, whereas it appears to be adequately addressed in the Forest Service EA document.

3-3

The consultants who have prepared the Initial Study/Mitigated Neg Dec appear to assert that due to the BTC facilities covering the site prior to the Rim Fire, those pre-fire conditions are the "baseline", so there would be no new significant impact from reconstruction of the Camp or re-operation of the Camp, despite the many new adjusted facilities and a much broader footprint of permitted operations on what would otherwise be national forest lands open to all members of the public. On that point alone, **it is clear that this project is not simply replacement of the existing camp. The previous BTC permit was for 14 acres,** (although the IS on page 5 admits that the actual area used by the Camp was roughly 25 acres when the leach field and "programmed use areas" were counted).

**Now, however, the City of Berkeley is requesting a new permit for 30 acres,** despite the IS/MND stating that 14.5 acres contain the parking, the main camp area, staff camp area, all support facilities, and the Sugar Pine and Small Falls Trails. (Note that in the project's EA document, the statement is made that all of those are contained within 13.5 acres.). It is not made clear in the IS/MND as to what justifies the expansion of the permit for the other 15.5 acres of the permit area. It appears from maps in the IS/MND that in addition to the leach field area, the majority of the permit expansion area is primarily intended to provide for new staff housing, a significant parking area, and an archery range. While those may be desirable in the eyes of BTC officials, it is noteworthy that an expanded permit area for Berkeley reduces public forest access and uses that would otherwise be available for the general public.

3-4

**The new proposal is more than double the acreage contained in the previous permit.** We assert that there should have been more analysis in the IS/MND of what would or would not be "grandfathered" in if this was not judged to be a renewal of the previous BTC facility. And accordingly, there should have been more sufficient rationale to explain whether there may or may not be impacts from adding 15.5 acres to the permit.

3-5

**IS/MND APPEARS TO PROVIDE INADEQUATE PROTECTION FOR RESOURCES ALONG RIVER**

In our previous CSERC comments concerning this project, our staff emphasized two key resource issues of significance. The first was that **we identified the problem of Camp facilities impinging closely adjacent to or directly out into the river corridor and potentially blocking normal wildlife movement along the river.** Our second key concern was potential contamination from Camp activities that would blow, leach, or wash into the River due to being so close to the river. We identified both of those concerns as issues needing careful consideration.

In the IS/MND, the consultants allege that the project will have no significant effect on riparian habitat, except possibly for the western pond turtle, and most of that risk would be from construction. We could not find any detailed discussion in the IS/MND concerning the impingement of the Dining Hall and its foundation/structural support intruding into the river corridor and affecting a broad suite of wildlife. We could not find any discussion in the IS/MND as to how mitigation would eliminate the Dining Hall and its support structure from constraining wildlife movement along the south edge of the river corridor. Furthermore, we could not find any river corridor wildlife movement considerations except for Special Status wildlife species – when in fact river corridor movement zones are important for nearly the full suite of terrestrial (and some aquatic) wildlife species.

As I communicated for our Center at the Open House, our biologists supported pulling back any infrastructure from the river area to the fullest extent feasible. As noted previously in these comments, in the Forest EA (which apparently is intended to mirror this CEQA analysis), the Forest Service document spells out clearly the mandate for the City to relocate most facilities out of the 100-year floodplain. Again, as mentioned previously, a review of the IS/MND does not appear to echo those pivotal requirements, or perhaps our staff has missed that analysis in our review. We emphasize with these comments that whichever legal analysis may prevail, it is our strong request that all facilities to the extent feasible be relocated outside of the river buffer area.

3-6

**GHG EMISSIONS AND THE LACK OF APPROPRIATE MITIGATION**

Tying back to a previous point raised in these comments, the project applicants and the document's consultant authors appear to suggest that there is no need for mitigation for GHG emissions created by the operations of this very large lodging, food service, recreational destination camp facility. CSERC believes this is not a valid conclusion. This project proposes to construct over 100 structures so that the Camp can operate as a destination that will draw large numbers of visitors arriving in vehicles, traveling from hours away to come to this Camp. Compared to the actual, current baseline -- which is no camp in operation at this time and no facilities at this time providing showers, food, and other amenities for 360 users -- the newly constructed Camp will produce high levels of GHG emissions over time once it is operating.

**But page 53 of the IS/MND claims that the new BTC would not produce more GHG emissions than pre-Rim Fire, so the project would not conflict with the goals of AB 32 and the impact is Less Than Significant. Under that assumption, no mitigation is required. CSERC strongly disputes that claim. When significant development (even for reconstruction purposes) is planned under CEQA, then feasible and realistic mitigation measures should be mandated to reduce GHG emissions for both the construction and the ongoing operations that will generate GHG emissions. New technologies are fully available for utilizing solar panels (no forest canopy exists at all in many sites on the project areas) or for utilizing a suite of other mitigation options to reduce emissions.**

CSERC urges that the Initial Study/Mitigated Neg Dec be revised to acknowledge the responsibility of the project applicant to reduce GHG emissions to be consistent with AB 32 and to also be consistent with an obligation to do all possible to provide feasible and cost-effective public benefits when applying for permitted use of public lands. Appropriate mitigation requirements to reduce GHG emissions should be incorporated into the approval process.

**3-7 THE CUMULATIVE IMPACTS OF THE PROJECT ARE NOT CORRECTLY OR ADEQUATELY ANALYZED**

If this project had been brought forward for consideration two years ago, there could be grounds for suggesting (as is done on page 92 of the IS/MND) that there are no cumulatively considerable impacts:

*“Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)*

*The proposed Project would not result in cumulatively considerable impacts.”*

However, the current situation is much different, and there ARE cumulative impacts that must be considered in determining whether or not to require mitigation for cumulative effects. First and foremost, the neighboring **Thousand Trails Yosemite Lakes Hardin Flat project is currently going through Tuolumne County’s Community Resources Agency for review and potential approval by the County. That project includes the addition of 150 RV sites, recreation cabins, and mobile-home sites. It also includes bridge abutment repairs and culvert repairs.**

Second, Hardin Flat LLC “Yosemite Under Canvas” is proposing a 99-unit luxury tent (glamping) campground site, a mobile kitchen, dining and reception tent, laundry facility, and restrooms/showers, etc. This second major development proposal is planned for a site just to the northwest of the Thousand Trails Yosemite Lakes project (which lies just to the west of the BTC site).

Third, Tuolumne County has received a pre-application inquiry for a major lodge facility directly across the highway from the glamping campground facility. While our Center has not received an advisory notice detailing the specifics of the new lodge facility proposal for the north side of the highway, area residents observed project consultants meeting with Cal Trans representatives to determine the extent of needed turn lanes, etc. for this lodge facility project. It obviously is not just speculation, since the proponents of the lodge facility have also held a meeting with local cabin owners to discuss the project, well water supplies, wastewater treatment, etc.

The combination of just the projects identified above totals 700-900 guests all bringing vehicles, noise, pollution, disturbance of wildlife, night-time lighting, and other impacts to an area within 2 miles of the BTC site. **To suggest that there is no cumulative impact of the BTC project when combined with other current or proposed projects would be disingenuous.**



**CSERC urges that the final Mitigated Neg Dec include acknowledgment that there IS a significant cumulative impact of this project when combined with currently proposed nearby development.**

In closing, in order for a project to qualify for reliance upon a Mitigated Neg Dec, it is necessary for there to be no potentially significant impacts that would be generated by the project.

3-8

For that to be the case with the Berkeley Tuolumne Camp project, CSERC urges that the project as described in the final IS/MND (1) require the relocation of facilities out of the 100-year floodplain, consistent with what is described in the Forest Service EA document, (2) that realistic GHG emissions analysis identify how cost-effective, feasible GHG mitigation measures can reduce the project's GHG emissions – and that feasible mitigation measures be mandated, and (3) that there be admission that the project will potentially create significant cumulative effects, and that in response that realistic mitigation measures are identified to reduce to some degree the significance of those cumulative impacts.



CSERC Executive Director

## Letter #3 Response: Central Sierra Environmental Resource Center

- 3-1 The purpose of the BTC Project is to continue as an organization camp consistent with current laws, regulations, and the Forest Plan Direction (March 2017) management emphasis for developed recreation sites. The need for the Camp is to continue at the same level of service as prior to the Rim fire to support the City of Berkeley's provision of broad, quality camp programs that provide outdoor recreation and experiences benefiting all Berkeley residents. Income from a fiscally sustainable Camps Fund supports all camp programming and staffing at BTC, Echo Lake Camp, and Day Camp in the City of Berkeley. In addition, the funding generated from BTC supports annual maintenance and long-term capital improvements at BTC, Echo Lake Camp, and Cazadero Camp.

The BTC Project is consistent with Forest Service policy encouraging organization camp facilities and programs that promote environmental education, hiking, fishing, and similar forest-related activities (FSH 2709.14, Policy 13.2). The Project is also aligned with Forest Service objectives to provide, under special use authorization, sufficient suitable facilities and services that supplement or complement those provided by the private sector, state, and local government on private land and the Forest Service on NFS land to meet public needs to facilitate the use, enjoyment, understanding, and appreciation of natural resource settings in National Forests (FSM 2340.2).

Reconstructed tent cabins, staff cabins, the Dining Hall and all utilities will be located outside of, or elevated above, the 100-year floodplain. Refer to page 67 and Figure 5 of the Draft Initial Study.

- 3-2 Current Forest Service and other applicable regulatory agency requirements will be adhered to for the replacement of BTC. Because the initial study concluded that the Project would have no significant and unavoidable environmental impacts, an analysis of Project alternatives is not required (CEQA Guidelines § 15063(d)).
- 3-3 The Project impact analysis for each environmental factor included in the Draft Initial Study is based on existing conditions at BTC; i.e. post Rim Fire conditions. This is a conservative approach, since it would be appropriate to utilize historic operational levels to establish existing environmental conditions baseline for CEQA purposes (*North County Advocates v. City of Carlsbad* (2015)—Cal.App.4th—Case No. D066488). For clarity Section 3 Air Quality, Impact Discussion, third sentence on page 25 is deleted:

~~With Project completion, BTC would have air pollutant emissions less than the Camp's pre-Rim Fire emissions because the new facilities would be built according to the requirements of current more-energy-efficient building codes.~~

The statement in the Project Description that about 14.5 acres of the permit area is proposed to be developed for parking, the main camp area, staff camp area, all support facilities and the

Sugar Pine and Small Falls Trails was made to provide a general understanding of the lands that may actually be disturbed by construction. (Refer to Chapter 2 for clarity). Thus, although the area covered by the Special Use Permit will be 30 acres (rather than the previous 14), the actual developed area will be approximately the same.

The difference between the Draft MND/IS and the EA statements for the majority of BTC developments occurring in 14.5 acres (vs. 13.5 acres on page 7 of the EA) is because the Draft MND/IS included the Small Falls and Sugar Pine Trails in the acreage estimate.

An expanded Special Use Permit area for BTC does not reduce public forest access and uses that could otherwise be available for the general public. The Special Use Permit for BTC does not provide for exclusive use of the Permit area. The general public and individual BTC campers have in the past, and likely will in the future, use federal lands in and around the BTC Special Use Permit area and along the South Fork Tuolumne River for a wide variety of dispersed recreation activities.

- 3-4 The expansion of the BTC Special Use Permit area by 15.5 acres is to incorporate all facilities, including the leach field area, and program areas into the Permit area. As shown on Figure 3 of the Draft Initial Study, this was not the case in the past. Other technical site considerations for the expansion of the Permit area include, but are not limited to: provision of parking off of Hardin Flat Road as required by Tuolumne County code; avoidance of cultural resources; and relocation of reconstructed structures out of the floodplain. The entire Special Use Permit area was surveyed for natural and cultural constraints that might be impacted by development to avoid potential impacts where possible or to identify the mitigation measures included in the MND/IS. The analysis of potential environmental impacts within the Special Use Permit area is contained in the technical reports that support the MND/IS.
- 3-5 Berkeley Tuolumne Camp is a river camp. Access to and use of the South Fork Tuolumne River corridor is fundamental to the BTC purpose and its programs. In the larger context of the region, the BTC location along the South Fork Tuolumne River is recognized as a developed recreation site in the Stanislaus National Forest's Forest Plan Direction (March, 2017). That designation balances river corridor use with multiple-use values, other goals and objectives, management prescriptions, and the associated standards and guidelines for attaining them. These include Riparian Conservation Areas (RCAs). Mitigation Measure HYDRO-8 and the referenced Tables A-1 and A-2 included in the Draft Initial Study outline mitigation parameters within which BTC must be designed and managed to accommodate the RCA goals and objectives.

The following technical reports in support of the MND/IS are available on the City of Berkeley web page for download. They address the full suite of terrestrial and aquatic wildlife species in the project area and potential impacts that may occur with the development and operation of BTC:

- Aquatics Biological Assessment / Biological Evaluation
- Terrestrial Wildlife Biological Assessment / Biological Evaluation
- Botany Report
- Potential Waters of the United States Report
- Migratory Landbird Conservation Report
- Management Indicator Species Report
- Noxious Weed Risk Assessment Report
- Biological Evaluation for Sensitive Plants
- Watershed Management Report

The implementation of the BTC revegetation plan (refer to the Draft Initial Study Figure 5) emphasizes riparian habitat and wildlife movement along the South Fork Tuolumne River, Thimbleberry Creek, and related drainages.

In terms of pulling facilities back from the river floodplain, all reconstructed buildings would be relocated outside of the 100-year floodplain, as clarified in Chapter 2, including the Dining Hall, Tent Cabins, and Staff Cabins. Construction within the floodplain would be limited to accessible paths of travel required by state and local law, a pier supporting the reconstructed pedestrian bridge, below ground water intake facilities, and in-kind repair or replacement of existing wall or weir structures if required. Refer to page 67 and Figure 5 of the Draft Initial Study. As communicated by CSERC at the Open House conducted in May, 2015 as part of the scoping process, the wildlife species specifically mentioned in relation to a suggestion to include larger buffers around the river, was raccoons. Since raccoons, and most other terrestrial wildlife species (with the exception of most birds) that migrate along the river corridor are generally nocturnal, an impediment to migration would be from human activity and BTC programs. These programs generally occur in the early evening hours only, before 10 pm. There are no facilities proposed that would block nighttime migration up or down the stream zone. Existing and proposed revegetation of riparian vegetation will benefit bird migration. Additionally, riparian revegetation and wildlife friendly bridges and/or culverts will facilitate wildlife migration along Thimbleberry Creek and related drainages.

- 3-6 Section 7 Greenhouse Gas Emissions of the Draft Initial Study concluded greenhouse gas (GHG) emissions of the proposed Project would be less than significant based on Project-specific GHG emission estimates from its construction and operational sources. Since neither the Tuolumne County Air Pollution Control District (TCAPCD) nor the San Joaquin Valley Air Pollution Control District (SJVAPCD) have quantitative significance thresholds for GHG emission, the Draft Initial Study GHG emissions significance determination was based on a review of the quantitative criteria adopted by other California air districts as summarized in the table below.

## CALIFORNIA AIR DISTRICT CEQA GHG SIGNIFICANCE THRESHOLDS

| Air District                 | Status                                                                     | Thresholds                                                                                                                                                                    |                                                                                                                                         |
|------------------------------|----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
|                              |                                                                            | Stationary Sources                                                                                                                                                            | Land Use Projects                                                                                                                       |
| Bay Area AQMD                | Adopted 2011; suspended by court order; re-adopted 2017                    | 10,000 MT CO <sub>2</sub> e/year                                                                                                                                              | 1,100 MT CO <sub>2</sub> e/year; or 4.6 MT CO <sub>2</sub> e/year/Service Population; or Compliance with a Qualified GHG Reduction Plan |
| Mendocino County AQMD        | Adopted Bay Area thresholds; rescinded 2013                                | None currently recommended pending adoption/CEQA review of GHG reduction plan                                                                                                 |                                                                                                                                         |
| San Joaquin Valley APCD      | Adopted 2009                                                               | No quantitative GHG emission standards. Implement Best Performance Standards (BPS) for GHG reduction; or demonstrate 29% reduction from business-as-usual (BAU) GHG emissions |                                                                                                                                         |
| San Luis Obispo County APCD  | Adopted 2012                                                               | 10,000 MT CO <sub>2</sub> e/year                                                                                                                                              | 1,150 MT CO <sub>2</sub> e/year; or 4.9 MT CO <sub>2</sub> e/year/Service Population; or Compliance with a Qualified GHG Reduction Plan |
| Ventura County APCD          | Proposed 2011                                                              | Options reviewed, but none currently recommended                                                                                                                              |                                                                                                                                         |
| South Coast AQMD             | Stationary - Adopted 2008;<br>Land Use - Proposed 2009 (no action to date) | 10,000 MT CO <sub>2</sub> e/year                                                                                                                                              | 3,000 MT CO <sub>2</sub> e/year                                                                                                         |
| Sacramento Metropolitan AQMD | Adopted 2009 (Revised 2014-2015)                                           | 10,000 MT CO <sub>2</sub> e/year                                                                                                                                              | 1,100 MT CO <sub>2</sub> e/year                                                                                                         |

Source: APCD/AQMD websites.

No California air district has adopted a quantitative threshold for project operation GHG emissions of less than 1,100 metric tons (MT) per year. Project annual GHG emissions from the BTC construction and operational sources combined would be well below this lower-limit threshold of 1,100 MT (i.e., at 314.7 MT from construction and 82.6 MT from operation), therefore, mitigation measures are not required under CEQA. To clarify Project GHG emissions would be less than significant, text is added to pages 52-53, Section 7 Greenhouse Gas Emissions Subsections 7a and 7b of the Draft Initial Study:

**a) Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?**

The California Emissions Estimator Model (CalEEMod, Version 2016.3.2) was used to quantify the proposed Project's GHG emissions ~~associated with Project construction activities and Project operation.~~

For Project construction, GHG emission rates for state-average construction equipment (as included in the CalEEMod database) were applied to Project-specific construction activities and equipment (as listed in Chapter 2 Project Description Table 3). Applying this model to the Total Project construction GHG emissions would be 314.7 metric tons of CO<sub>2e</sub> and its annual emissions in the first year of operation would be 82.6 metric tons of CO<sub>2e</sub> (assuming that all construction activity would occur in the year 2019, a worst-case scenario because the state-average construction fleet will emit less GHG emissions in subsequent future years). No California air district has set a CEQA significance threshold for construction GHG emissions. Neither the Tuolumne County Air Pollution Control District nor the San Joaquin Valley Air Pollution Control District have quantitative significance thresholds for operational GHG emissions

For Project operation, CalEEMod was initialized according to its land use type/size (i.e., number of family/staff tent cabins to be built with provision for electricity) and with Project-specific motor vehicle trips (see Section 16 Transportation and Circulation) and Project-specific water use data (see Section 18 Utilities and Service Systems). The model's interim total GHG emissions were adjusted further in proportion to the Project's planned operation only during the summer season (15 weeks, rather than a full year's 52 weeks). The adjusted total Project annual operational GHG emissions as shown in Table A would be 82.6 metric tons of CO<sub>2e</sub>. Both Project construction and operational GHG emissions are well below the quantitative thresholds adopted by other California Air Districts and would comply with adopted GHG reduction plans, as discussed in Subsection 7b below), thus, Project GHG emissions impacts are less than significant.

**TABLE A: PROJECT ANNUAL OPERATIONAL GREENHOUSE GAS EMISSIONS (metric tons/year)**

| <b>Project GHG Source</b>      | <b>CO<sub>2</sub></b> | <b>CH<sub>4</sub></b> | <b>N<sub>2</sub>O</b> | <b>CO<sub>2e</sub></b> |
|--------------------------------|-----------------------|-----------------------|-----------------------|------------------------|
| <u>Area</u>                    | <u>&lt; 0.1</u>       | <u>0</u>              | <u>0</u>              | <u>&lt; 0.1</u>        |
| <u>Energy Use</u>              | <u>41.7</u>           | <u>&lt; 0.1</u>       | <u>&lt; 0.1</u>       | <u>41.9</u>            |
| <u>Motor Vehicles</u>          | <u>32.8</u>           | <u>&lt; 0.1</u>       | <u>&lt; 0.1</u>       | <u>32.9</u>            |
| <u>Solid Waste Disposal</u>    | <u>1.2</u>            | <u>0.1</u>            | <u>0</u>              | <u>2.9</u>             |
| <u>Water Use</u>               | <u>3.2</u>            | <u>0.1</u>            | <u>&lt; 0.1</u>       | <u>5.0</u>             |
| <b>Total</b>                   | <b>78.9</b>           | <b>0.1</b>            | <b>&lt; 0.1</b>       | <b>82.6</b>            |
| <b>Significance Thresholds</b> |                       |                       |                       | <b>1,100</b>           |
| <b>Significant Impact?</b>     |                       |                       |                       | <b>No</b>              |

Source: CalEEMod (Version 20163.2) initialized with Project-specific parameters relating to its land use type/size, motor vehicle trip generation, water use and its planned operation only during summer months.

Note: Quantitative thresholds adopted by other California air districts range from 1,100 – 3,000 MT CO<sub>2e</sub> per year. The minimum quantitative threshold of 1,100 MT is used for this analysis.

**b) Would the project conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?**

~~GHG emissions from the reconstructed BTC would not exceed its pre-Rim Fire level. The Project would reconstruct BTC utilizing green building measures (see Table 1 in the Project Description). As presented in Table A, Project annual operational GHG emissions would be below the lowest established California air district significance threshold.~~ Thus, the Project would not conflict with the goals of AB 32 or any other State climate change prevention or adaptation strategies, a less than significant impact.

- 3-7 According to the Tuolumne County Planning Department, of the three projects identified by the Commenter, only one of the projects has submitted an application: Yosemite Under Canvas (YUC). The YUC project is currently under environmental review. It is unknown if the other two projects identified by the Commenter will submit applications to Tuolumne County and it is unknown what the ultimate projects will propose as part of their permit application. Therefore, the Thousand Trails project and the major lodge project are not addressed in our response as they are considered too speculative to be reasonably foreseeable (CEQA Guidelines Section 15064).

According to Tuolumne County Planning Department, the YUC project proposes 99 tent sites. The Initial Study for YUC is currently under preparation consequently there is no information available regarding transportation, air quality and GHG emissions for the YUC project. Assuming 99 average daily trips (ADT) for YUC, in combination with 132 ADT for the BTC project, would result in a total increase of 231 ADT on Highway 120. As demonstrated below, this would represent a minor increase in ADT on the Big Oak Flat segment of Highway 120.

The most recent Caltrans data for ADT on the Big Oak Flat segment of Highway 120 shows a peak hour ADT of 1,050 (<http://www.dot.ca.gov/trafficops/census/volumes2016/Route118-133.html>). The Big Flat segment of Highway 120 is considered a Mountainous Major Collector under the Tuolumne General Plan, which has a Level of Service (LOS) 'A' threshold of 3,190 ADT for very good operations with little congestion (Tuolumne County General Plan Draft Environmental Impact Report, Appendix D, Traffic Study). The combined BTC and YUC projects represent an increase of 231 ADT on the Big Oak Flat segment of Highway 120 which would not impact the existing LOS 'A' rating. The increased ADT is far below the maximum two way ADT of 13,520 (corresponding to a minimum LOS 'D') identified by the Tuolumne County General Plan (Policy 4.1.A), and is therefore considered a less than significant transportation impact.

The Tuolumne County Air Pollution Control District (TCAPCD) emission thresholds are 1,000 lbs/day or 100 tons/year for all pollutants. The highest BTC emissions for NO<sub>x</sub> are about 20 lbs/day and about one ton/year. Conservatively applying comparable emissions

- from the YUC project, the total emissions would be considerably well below the TCAPCD threshold.
- 3-8 To summarize, (1) the Project would relocate reconstructed BTC buildings out of the 100-year floodplain consistent with the Draft Environmental Assessment prepared for the Project; (2) the Project GHG emissions would be below established thresholds and thus less than significant; and (3) the Project would not have impacts that are cumulatively considerable.



September 25, 2018

Liza McNulty  
Program Manager  
City of Berkeley Parks Recreation & Waterfront  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704

Dear Ms. McNulty,

I am writing on behalf of Friends of Berkeley Tuolumne Camp (FOBTC) to express our support for the Initial Study of the potential environmental impacts of the City of Berkeley Tuolumne Camp Permit (46690) Project. The Initial Study appropriately finds that the project (as proposed with mitigations) will not have a significant effect on the environment. We support the findings of the Mitigated Negative Declaration (MND) and urge the City Council to adopt the MND.

The Initial Study's supporting documents show that the Berkeley Tuolumne Camp project will help revegetate forest habitat and restore and improve stream habitats, including in the Tuolumne River. City staff have thoughtfully and sensitively designed the project to rebuild camp in ways that will create a delightful and restorative environment for campers and staff and bring back a vital and healthy forest.

FOBTC represents thousands of campers and staff, including hundreds of Berkeley households, spanning many generations of involvement over the 100-year history of camp. We are united in one goal – to help rebuild camp so that future generations of Berkeley families from all neighborhoods and backgrounds can have the same life-changing experiences at camp that ours did.

We are pleased to see the reconstruction process continue to move forward. We ask the City Council to adopt the MND so that the permitting and rebuilding process can continue to make rapid progress.

Sincerely,

Christine Chilcott  
President - Board of Directors  
Friends of Berkeley Tuolumne Camp

*Friends of Berkeley Tuolumne Camp (FOBTC) is dedicated to preserving and enhancing the Camp experience for present and future generations through education, volunteer efforts, and financial support*

[contactus@fobtc.com](mailto:contactus@fobtc.com) (510) 236 - 7469  
<http://www.fobtc.com>  
PO Box 7931, Berkeley, CA 94707

## Letter #4 Response: Friends of Berkeley Tuolumne Camp

4-1 Comment noted, no response necessary.

### 3.3 INDIVIDUALS

**McNulty, Liza**

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**From:** Mariko Roberts <marikoroberts48@gmail.com>  
**Sent:** Tuesday, September 11, 2018 7:39 AM  
**To:** comments-pacificsouthwest-stanislaus@fs.fed.us  
**Cc:** McNulty, Liza  
**Subject:** BTC

As a member of volunteer planner and designer for the rebuilding of the Berkeley Tuolumne Camp, as well as a writer and reviewer of numerous environmental documents from mid 1970's until retirement in 2011, I believe that the proposal reflects sensitively to environment settings and social/archeological concerns.

I often reflect on my family's annual and continuous visits to the camp since the summer of 1968 with great fondness; and disappointed that my grand children (now 10 and 7 years old) have not had this opportunity.

I believe that the rebuilt BTC would be even better (environmentally and socially) than the previous.

Sincerely,

Mariko H. Roberts  
(Continuous Berkeley resident since 1959).

**Letter #5 Response: Mariko H. Roberts**

5-1 Comment noted, no response necessary.

1/4

Camp-Tuolumne-Parks-Rec-Waterfront-Public-Comment: CEQA Neg Dec  
09.12.18

I have a special interest in the rebuilding of Berkeley's Tuolumne Camp and making sure that it is a resource that is shared and open to all residents of the city. My concern is that it is only serving a small sector of the community, and one that is not very representative of Berkeley's diverse population.

Reading through the City of Berkeley Tuolumne Camp Permit (46690) SPECIALIST REPORT brought to my attention what seems to be the mission of BTC (Berkeley Tuolumne Camp). On page 12 of the report, it describes the priorities listed under the permit granted by the Forest Service as amended in 1976 that — "establishes priorities for campers served." It lists three classifications:

Priority 1 — 'at-risk', disabled or low-income/scholarship campers

Priority 2 — youth and educational programs

Priority 3 — family campers

Table 1.01-9 in the report (p 13) shows the typical usage by these groups for the years 2005–2013:

#1 Priority (At-Risk, Low-Income, Disabled) 196 campers / 4.85% of BTC / 27% of ALL CAMPS

#2 Priority (Youth Educational) 182 campers / 4.5% of BTC / 8.1% of ALL CAMPS

#3 Priority (Family Campers) 3.367 campers / 90.6% of BTC / 64.7% of ALL CAMPS

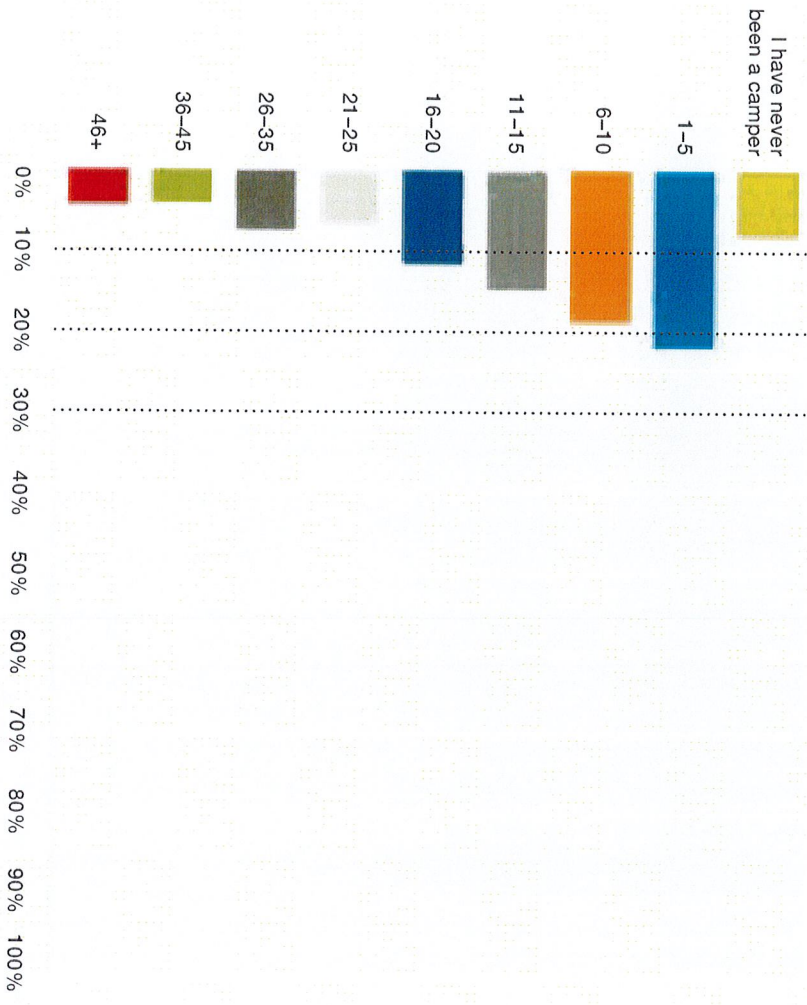
These numbers point out that the majority of visitors to BTC are family campers and not the number 1 priority group of low-income or at-risk youth. I can understand the report's premise that the BTC family camp is used as an income generating enterprise that provides annual surplus of \$564,000 but where does that money go? Is it funding outdoor and educational experiences for the priority groups 1 and 2? It doesn't appear so.

I would ask that the City and the Commission do better at meeting Tuolumne Camp's mission and make it more inclusive and open to all residents of Berkeley. And to responsibly use the half-million dollars in annual revenue towards outdoor experiences and education for the two priority groups identified — at-risk/low-income youth and youth education in general.

The survey results below conducted by the Berkeley Parks, Recreation & Waterfront Department in Spring 2015, show that a significant number of campers attend Tuolumne Camp year after year, thus limiting the number of new participants. 59% of campers polled have attended the camp for 11 or more years. 15% have attended Tuolumne Camp for 21-35 years. This data shows that even a smaller number of (unique) individuals have access to the camp than the yearly attendance suggests. Conclusion: a significant portion of campers are the same people year after year, and many of those people are non-Berkeley residents. -CAMERON WOO

### Q5: Which of the following categories best represents your total years as a camper at Tuolumne Camp?

Answered: 432 Skipped: 8



Those polled: 234 Berkeley residents  
198 Non-Berkeley residents

Opinion submission to Berkeleyside 04.07.17  
730 words

Tuolumne Funding Approved ... But Who Are Berkeley's Happy Campers?

By Cameron Woo

Cameron Woo is a longtime Berkeley resident, business owner and outdoor enthusiast

On Tuesday of this week, the Berkeley City Council voted to appropriate \$3.3M to help reconstruct Tuolumne Camp which was destroyed in the 2013 Rim Fire. In the question whether to rebuild, Tuolumne Camp has a lot going in its favor—a beloved tradition as Berkeley's family camp since 1922, a committed and vocal group of supporters lobbying for its resurrection, and the idea of a resource that has aided generations of Berkeley families to commune with nature. What's not to support?

I agree that summer camp is a positive, often transformative, experience. Particularly for city dwellers, the week long retreat is a time for fellowship, discovery and relaxation. Tuolumne Camp appears to offer all of this and more. Unfortunately, it is serving only about 2,400 Berkeley residents each season (based on a 4,000 yearly attendance, 60% of whom currently live in Berkeley). That is slightly less than 2% of the Berkeley population. In addition, 80% of the campers have attended for 6+ years, many for generations.\* With this high level of legacy attendees, the pool of participants grows smaller still. One has to ask if this is a good use of \$3.3M of taxpayer funds. (Cost estimates by the city show that figure could rise to \$5.3M)

Who attends Tuolumne Camp? A review of the Friends of Tuolumne Camp Facebook page revealed an extremely homogeneous group of campers. All the photos depicted white families enjoying camp life. I found one African American individual among the gallery of images posted. These photos seem not to reflect the racial diversity of Berkeley—they neither represent the economic or social makeup of our city. The visual evidence suggests that Tuolumne Camp is a very segregated experience.

As a Berkeley homeowner and taxpayer, I became curious to learn what programs and financial assistance the city offers to low-income Berkeley families to attend Tuolumne Camp. I was especially interested to learn about the city's outreach efforts to publicize this great resource and its many benefits. Did they spread the word via schools? Through churches or neighborhood groups? From our council members? For many, the camp appears to be among Berkeley's best kept secrets.

I am still waiting to hear back from the Parks, Recreation and Waterfront Department on specific outreach programs and support for low-income families to attend the camp. Unlike the other two facilities that fall under Berkeley auspices—Cazadero Camp and Echo Lake Camp—each of whom presented the City Council with specific programs they've established to serve at-risk youth and families in need—Tuolumne Camp has made no such claims.

On Tuesday, council member Worthington acknowledged the legitimate questions of inclusivity and access to Tuolumne Camp, but summed up his belief that the relatively small contribution from the city of \$3.3M could leverage upwards to \$54M in insurance and FEMA funding—and described it as “a good investment.” The question to ask is ... who will reap the rewards?

The Council unanimously approved the expenditure. With this green light, Berkeley's Parks, Recreation & Waterfront Department appears committed to reconstruct Tuolumne Camp to its former glory. The Friends of Tuolumne Camp, an impassioned group of citizens, is lending its support. As the camp is



rebuilt over the next few years, it is an opportunity to envision what a city camp can be—a respite from urban life, a place for learning and a way to engage with community. These formative experiences should be made more available to all Berkeley residents. Nowhere is this needed more than in the city's underserved neighborhoods. One only need to look to the city of Richmond to find an innovative, socially relevant program called "YES Nature to Neighborhoods" that provides low-income youth and families access to the natural environment. Berkeley would do well to follow their lead. The investment Kriss Worthington spoke of should be applied to fostering the next generation of environmental stewards. How will people fight to save our forests if they have never had the good fortune to live among them?

Let's hope that Tuolumne Camp is reconstructed to better serve today's Berkeley and the rich diversity of its citizens. After all, each of us is paying for it.

\*Data sourced from survey conducted of 440 Tuolumne Camp participants by Berkeley Parks, Recreation and Waterfront Department in Spring 2015.

Link from YES Nature to Neighborhoods: <http://www.yesfamilies.org>

## Letter #6 Response: Cameron Woo

- 6-1 This comment refers to a social effect of the Project, not a potentially significant effect on the environment (Section 15131 of the *CEQA Guidelines*). However, a response to Mr. Woo's comment is provided to present social information pertaining to the Project to clarify the social and economic benefits of the Project.

The comment states that the majority of visitors to BTC are family campers and that these campers are not the Forest Service's Number 1 priority group of low-income or at-risk youth and expresses an understanding, as cited in the Society, Culture and Economy Specialist Report (Specialist Report) referenced by Mr. Woo. The comment also states that the BTC family camp is used as an income-generating enterprise, but questions where that funding goes.

BTC is one of four camp facilities and/or programs of the City of Berkeley that operate as a single economic entity known as the Camps Fund. The Camps Fund is required to be self-sustaining and does not receive any operating revenue from the City's General Fund. Income to the Camps Fund provides for all camp programming and staffing at BTC, Echo Lake Camp, and the Berkeley Day Camp conducted in Berkeley. In addition, the Camps Fund is responsible for annual maintenance and long-term capital improvements at BTC, Echo Lake Camp, and Cazadero Camp.

As stated in the Specialist Report,

“The needs for the restoration of BTC are larger than what can be observed on-site, because the BTC has for decades been an integral fiscal enabler of other service delivery programs of the City of Berkeley including the Youth Camp programs housed at Echo Lake Camp, the Day Camps programs housed in Alameda County, and the Cazadero Camp located in Sonoma County. All of these facilities depend on the surplus revenue that can be earned by BTC Family Camp programs, and restoration of the full comprehensive Camps Program will require the camper-serving capacity of the new BTC to be equal to what existed before the Rim Fire. Anything less than full visitor-serving capacity at BTC will diminish the City's ability to offer programs to at-risk youth and individuals with disabilities, both at the two residential camps on NFS lands in the Sierras and at Berkeley Day Camp in and around the City of Berkeley.”

- 6-2 This comment refers to a social effect of the Project, not a potentially significant effect on the environment (Section 15131 of the *CEQA Guidelines*). However, a response to Mr. Woo's comment is provided to present social information pertaining to the Project to clarify the social and economic benefits of the Project.

As noted, Table 1.01-9 in the Specialist Report cites that while 4.85 percent of historical use at BTC was by at-risk, low-income, or campers with disabilities, the overall percentage for all City of Berkeley camps (including Echo Lake Camp and Berkeley Day Camp) is 27 percent.

This well documents the success of BTC in supporting the overall goals of the City. The reconstructed BTC would be accessible which should encourage more use by individuals with disabilities and their families. It is agreed that as the BTC is reopened there will be an opportunity to reevaluate the BTC Camp fee structure and supplemental fiscal support opportunities to increase use by low-income families who reside in the City of Berkeley.

2396 Rubicon Lane  
Lincoln, CA 95648

Mr. Jason Kuiken  
Forest Supervisor  
Stanislaus National Forest  
Attn: BTC  
19777 Greenley Road  
Sonora, CA 95370

September 17, 2018

Subject: Comments regarding proposed Mitigated Negative Declaration & Berkeley Tuolumne Camp Permit (46690) Project

Dear Mr. Kuiken:

I hereby submit comments regarding the proposed Mitigated Negative Declaration & Berkeley Tuolumne Camp permit project.

- 7-1 My family owns the first privately owned home immediately west of and adjacent to United States Forestry Service (Stanislaus National Forest) property leased by the City of Berkeley. In 2015, our original five subjects of concern regarding the proposed permit project were identified in written comments & forwarded to the USFS (SNF) Sonora Office. This month we reviewed the proposed Mitigated Negative Declaration & proposed permit project report. Our concerns are mostly resolved regarding the following subjects: 1) flood protection/mud-slide risk; 2) planned fuel modification of existing forest; 3) recreational land use; 4) surface water and groundwater quality; & 5) high-risk campfire use. *Our concerns regarding increased fire risk, water quality protection notice, noise & trespass are unresolved; in addition, the placement of future road signs & Hardin Flat Road logging & construction barriers are of new concern.*
- 7-2 Please make sure all campfires at BTC's central location are banned permanently due to high risk of forest fire; in addition, eliminating the use of campfires will help improve Hardin Flat community's poor air quality caused by increased campfire smoke during summer months. For those of us with allergies and asthma, campfire smoke and prescribed burning pose severe health challenges that must be avoided.
- 7-3 Regarding protection of water quality, please make sure any installed sewer system and leach field do not result in degradation to river (surface) water and groundwater; in addition, please make sure these systems do not threaten human health and/or contaminate riparian habitat. My family and pets play in or near Tuolumne River South Fork all four seasons. How will local residents or private property owners be notified in case of accidental spills or contamination?
- 7-4 My family recommends plans for an outdoor stage in the central camp be eliminated. As you probably know, sounds carry loud and clear in the mountains. In the past, amplified noise from the stage was clearly heard at our home and, for those of us who truly enjoy Mother Nature's solitude, unwarranted noise from this stage was not welcome. We recommend the proposed indoor River Hall replace the outdoor stage so amplified noise is not heard by neighbors.

Page 2 of 2  
Proposed BTC Permit Project

7-5 My family's experiences with people who visit BTC have been negative occasionally. Some BTC visitors have "day camped" on our private property along the Tuolumne River South Fork. These visitors have subjected my family to unwarranted noise; trash left on the riverbank for us to clean, including human feces; and literally stopped my family from trout fishing and/or relaxing on our property along TRSF. Other visitors walk west & east across the meadow immediately behind our home or take shortcuts down our driveway & path to the river. My family members have been threatened and our pets attacked on our property by unleashed dogs. We want to avoid all of these situations in the future.

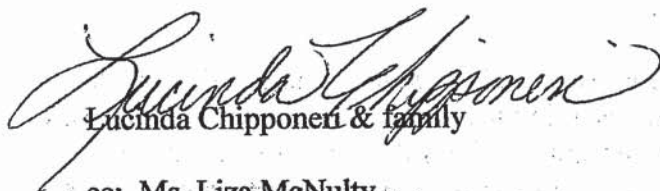
7-6 We recommend Hardin Flat Road construction barriers be placed at least 200-yards east of the west side boundary of Stanislaus National Forest before & during logging & construction. If the road barriers are closer to the construction site, Hardin Flat residents will hear less traffic noise, & experience less wear & tear to their property (driveways) when vehicles, including construction traffic (trucks) & recreational vehicles, need to turn around.

7-7 We recommend no temporary or permanent BTC or USFS signs be posted within 100-yards of the Hardin Flat Road west side boundary of Stanislaus National Forest. Even if well intended, unsightly signs (such as the large red & white "no campfire" sign recently installed) mar the view of natural forest that escaped Rim Fire devastation.

7-8 And lastly, we truly appreciate BTC is seasonal (summer only), limited to no more than 350 visitors & Teepee Village or the tent overflow area west of BTC's central location is eliminated. One of the objectives of USFS's Forest Plan Direction after the Rim Fire is to enhance deer habitat. My family agrees with USFS's proposal, and we recommend that deer enhancement be done at BTC in and west of the former overflow area where an established deer route is already located. Here the natural habitat & thermal cover were not completely burned by the Rim Fire so deer are able to forage and hide. In the past five years, we have witnessed an increase of deer behind our home and our neighbors' homes to the west because riparian habitat was not burned. USFS and Berkeley have an opportunity to provide better deer enhancement in BTC's former overflow area. This enhancement would further protect community deer populations, which are enjoyed by local residents and visitors.

We appreciate the opportunity to provide comments; thank you. If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Lucinda Chipponeri & family

cc: Ms. Liza McNulty  
Program Manager  
City of Berkeley

## Letter #7 Response: Lucinda Chipponeri & family

7-1 Comment noted. Lucinda Chipponeri's comments pertaining to fire risk, water quality protection notice, noise, trespass and signage/construction barriers are addressed in Responses 7-2 thru 7-8.

7-2 Campfires would be limited to 8 pm to 9:45 pm Friday nights during the operating period. BTC is required to obtain a burn permit on an annual basis for campfires and brush removal. Mitigation Measure AIR-2 has been clarified to prohibit burning in the Camp on no burn days. Refer to Chapter 2.

There would be a fireplace associated with the Dining Hall. The reconstructed Camp would include an approximately 240,000-gallon water supply for fire prevention storage and a system of hydrants and standpipes throughout the Camp as approved by the Tuolumne County Fire Marshall.

BTC would implement a Noxious Weed Management Program to reduce fuel sources within the Camp, and hazard trees would be removed. On-site staff would reside at the Camp full time during BTC operations. While there remains a risk of human caused fire outbreaks at the site, the presence of staff on site full time significantly reduces the risk of unauthorized and unsafe campfires in the area compared to the existing condition.

Management requirements of the Forest Service include that the Camp acquire burn permits from the appropriate County Air Pollution Control District that would determine when burning of burn piles is allowed. Burn plans would be designed and implemented to minimize particulate emissions. In addition the Groveland District Wildlife Biologist would be notified prior to pile burning to minimize disturbance to protected or sensitive species.

7-3 All BTC wastewater system features will be designed and constructed to be outside the 100-year floodplain of the South Fork Tuolumne River, which was not the case prior to the Rim fire. The leach field design will include percolation tests and soil profiles, system design plans and specifications (plot plan, grading plan, description of groundwater and soils, description of monitoring devices, system operation and function), and site evaluation and testing necessary to obtain certification of an on-site sewage treatment and disposal system pursuant to Tuolumne County Code Section 13.08.270A.

A Water Quality Emergency Notification Plan is required by Tuolumne County and the State of California – Health and Human Services Agency, California Department of Public Health prior to the start of Camp operations. Among other requirements, this plan would include the means and methods for notifying neighbors should there be any wastewater system failure.

7-4 Comment noted. The outdoor stage and amphitheater are integral components of the Camp and support a variety of BTC programs and activities. Stage use with amplified sound is

- typically limited to Thursday and Saturday nights, 8 pm – 9:30 pm during the operating period. The stage is oriented to the north, not downstream to nearby residences. Mitigation Measure NOISE-1 specifies the speaker system must be designed to meet noise levels of 50 Leq, dB, which is consistent with the Noise Element of the Tuolumne County General Plan for stationary noise sources. The speaker system for the BTC stage will not exceed noise levels of 50 Leq, dB at the downstream boundary of the Permit Area. This will be ensured by setting maximum volume levels via monitoring with a handheld SPL meter (sound pressure level) at the Special Use Permit area boundary.
- 7-5 If any of the nuisance factors mentioned in the comment have occurred in the past five years, they were unrelated to BTC as it has not been operational. Dogs are not permitted at BTC. While BTC operates under a Special Use Permit from the Stanislaus National Forest, that permit is not for exclusive use. BTC operates a full set of programmed “day camp” activities, none of which take place adjacent to or on downstream private properties. The general public and individual BTC campers have in the past, and likely will in the future, use federal lands in and around the Camp Special Use Permit area and along the South Fork Tuolumne River for a wide variety of dispersed recreation activities. If BTC campers are trespassing or causing a nuisance, City staff should be notified. If members of the general public are trespassing or causing a nuisance to private property the Groveland Ranger District of the Stanislaus National Forest should be notified.
- 7-6 BTC has not been operational since the Rim fire. All emergency and hazard tree logging at the Camp has been conducted by others under a permit from the Stanislaus National Forest. Currently Hardin Flat Road has been closed by Tuolumne County for the reconstruction of the Hardin Flat Road bridge across the South Fork Tuolumne River. Barriers have been placed along Hardin Flat Road for that construction. During the reconstruction of BTC, Hardin Flat Road should remain open. No barriers are anticipated. One-way traffic controls or temporary road closure may be in place during some period of construction; such controls and closures would be only at the Camp itself, and limited in duration/occurrence. It is not anticipated that through traffic will be diverted requiring vehicles to turn around because of BTC construction.
- 7-7 Two signs are proposed within the Hardin Flat Road right-of-way going both directions to announce entrance into the Camp permit area. Other signs will face Hardin Flat Road at each of the BTC entry drives. These signs will be constructed of natural materials based on the design guidelines contained in the Design Narrative Built Environmental Image Guidelines as referenced in the aesthetics section of the MND/IS and thus will not have any significant aesthetic or other environmental impacts.
- 7-8 The reconstruction of BTC includes a revegetation plan that emphasizes dense riparian plantings and conifers shading the South Fork Tuolumne River, Thimbleberry Creek, and related drainages. These will enhance wildlife corridors (refer to the Draft Initial Study, pages 9 – 10 and Figure 6). The BTC Special Use Permit Area does not include the

“overflow area” referenced by the comment. Any habitat enhancement in this area would be under the auspices of the Forest Service.



Liza McNulty, Program Manager  
City of Berkeley  
Parks Recreation & Waterfront  
2180 Milvia Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

Dear Ms. McNulty:

I am writing to express my wholehearted support of the City of Berkeley Tuolumne Camp Permit (BTC) project's 30-year permit to reconstruct the camp, much as it was before the 2013 Rim Fire, and to operate Camp throughout the life of the permit. I also hope that after its' 30 year term, that this permit may be extended for generations to come.

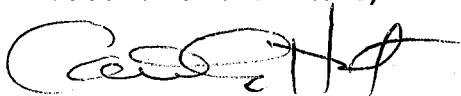
My family began its' BTC camping traditions in 1977 and is hoping to have the opportunity for our fourth generation of campers return when camp reopens in the near future. The South Fork of the Tuolumne just upstream of Hardin Flat is to our family what it is to countless others: a mountain home. There is no other place on the planet that substitutes for this respite away from the Bay Area.

As a biologist, I am relieved to see written documentation that "Based on the results of the IS prepared according to CEQA Guidelines, it has been determined the Project will not have a significant effect on the environment and a Mitigated Negative Declaration (MND) has been prepared." Regarding re-vegetation of the site, I am reassured to read that "planting program design documents (90 percent completion) will be submitted to the Forest Service for review and comment for consistency Forest Service standards." Furthermore, all endangered, threatened, and non-threatened species are protected and accounted for in this plan.

Also, as a dark-sky enthusiast, I am glad to see in the Mitigated Negative Declaration the that:

- All outdoor lighting shall be dark sky-compliant and consistent with California Green Building Standards Code Section 5.106.8 Light Pollution Reduction
- All light fixtures shall include shrouds (either fixed or adjustable), other shielding, or be directed in such a way as to block direct light as seen from Hardin Flat Road.
- Lighting that is not required during nighttime hours shall be controlled by the use of timed switches and/or motion detector activation controls so lights are only on when necessary.

Thank you for your consideration of my support for this very important place and rebuild for the future,



Carol A. Hart  
5599 Bear Creek Dr.  
Catheys Valley, CA 95306  
209-374-3324 Home  
928-814-2404 Cell

## Letter #8 Response: Carol Hart

8-1 Comment noted, no response necessary.

CEQA

Negative Declaration

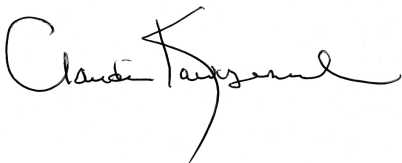
Berkeley Tuolumne Camp Permit (46690)

October 1, 2018

As a Berkeley Parks and Waterfront Commissioner, I have had the opportunity to follow the project planning and re-development of Berkeley Tuolumne Camp since its unfortunate destruction in the 2013 Rim Fire. Tuolumne Camp is a treasured resource and I applaud the efforts to rebuild the facility. In reviewing the CEQA, I took notice of significant impacts regarding the cultural resources detailed in the report, specifically pages 12–13 that list the “Campers served in the Berkeley camps program by priority” — the data shows unequal usage (90%) by BTC Priority #3 (family campers, private groups) over the BTC Priority #1 (at-risk, low-income, disabled) and BTC Priority #2 (youth and educational programs) that make up the remaining 10% of camp usage.

These figures are not in keeping with the mission of Berkeley Tuolumne Camp and I would demand that we do better. I will be supporting programs and efforts in the future to increase the participation of the priority groups identified in the CEQA, and this insure that BTC is open to all Berkeley residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Kawczynska". The signature is fluid and cursive, with a large initial 'C' and a long, sweeping underline.

Claudia Kawczynska

Member of Parks and Waterfront Commission

**Letter #9 Response: Claudia Kawczynska, Member of Parks and Waterfront Commission**

9-1 Comment noted. See Letter 6, Responses 6-1 and 6-2.

Liza McNulty, Program Manager  
City of Berkeley  
Parks Recreation & Waterfront  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704  
Email: [lmcnulty@cityofberkeley.info](mailto:lmcnulty@cityofberkeley.info)

Date: October 1, 2018

RE: Comment on the proposed City of Berkeley Tuolumne Camp Permit (BTC) project:  
Mitigated Negative Declaration (MND) and Initial Study (IS)

Dear Ms. McNulty,

Thank you for the opportunity to provide comments on the draft Mitigated Negative Declaration (MND) and Initial Study (IS) for the City of Berkeley Tuolumne Camp (BTC) project.

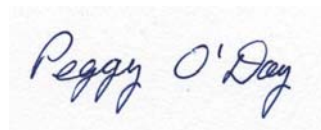
I am opposed to the proposed plan as described in the MND and IS for the following reasons:

- 10-1 1. The proposed plan requests a significant expansion of the Special Use Permit (SUP) from the Forest Service from the prior approximately 14 acres to 30 acres, more than doubling the area of use by up to 360 people per day during the months of operation. This intensive use will have significant impacts on biological and cultural resources and on water quality as noted in the IS.
- 10-2 2. The expansion includes new permanent buildings and a parking lot on the north side of Hardin Flat Road. This area was not part of the prior BTC developed area. It is a significant expansion of the camp's built footprint that will negatively impact a previously undeveloped area. As noted in the IS, this expansion has the potential for substantial adverse effects on sensitive and endangered plant and animal species directly from development and by habitat modification, particularly for the California Spotted Owl, Western Pond Turtle, and Slender-Stemmed Monkey Flower. The proposed mitigation measures consisting of new surveys, avoidance, or relocation of sensitive species is inadequate to address habitat loss and modification that will result from rebuilding, new expansion of permanent structures, and intensive use.
- 10-3 3. The proposed project has the potential to cause a substantial adverse change in archaeological resources, as indicated in the IS. This area contains a large number of Native American cultural artifacts, including bedrock mortars within the BTC permit area. The proposed mitigation does not address adequately preservation of known cultural sites or potential impacts on new sites that may be uncovered by development.
- 10-4 4. The BTC project site occupies both banks of a sensitive Riparian Conservation Area along an undeveloped reach of the S. Fork of the Tuolumne River. Although the new plan moves buildings out of the 100 year floodplain, a number of structures would be built within the floodplain, including a pedestrian bridge, footpaths, ramps, walls, and weirs with the potential to impact water quality and alter surface drainage patterns, as noted in the IS. In addition, steep banks along the river corridor are susceptible to significant soil erosion with potential large impacts on water quality.

10-5 When the Berkeley Tuolumne Camp was established in 1922, development and use were encouraged on public lands, and little thought was given to long-term human impacts on forest and riparian areas. In the 21st century, we are acutely aware of the degradation to our natural and cultural resources from concentrated development in sensitive areas. I am surprised and disappointed that the City of Berkeley has not put forth plan that minimizes, rather than expands, their environmental impact.

10-6 I encourage the City of Berkeley to consider a plan that reduces, rather than increases, their built footprint and is consistent with modern concepts of sustainability and limited development. If the economic model for the City requires a facility of this size and scope in order to be financially viable, the City and Forest Service should consider an alternate location for such a camp. This sensitive Riparian Conservation Area is just beginning to recover from the devastation of the Rim Fire. Restoration of this habitat, rather than re-development and expansion, would have long-term, lasting benefits for this unique ecological and cultural area.

Sincerely,

A handwritten signature in blue ink that reads "Peggy O'Day". The signature is written in a cursive, slightly slanted style.

Peggy O'Day  
2265 E. North Bear Creek Dr.  
Merced, CA 95340  
email: poday55@comcast.net

**Letter #10 Response: Peggy O'Day**

- 10-1 The Draft MND/IS identifies potentially significant impacts to Biological Resources (refer to pages 31-34 of the Draft Initial Study); Cultural Resources (refer to pages 45-46 of the Draft Initial Study); and Hydrology and Water Quality (refer to pages 57-71 of the Draft Initial Study). As stated in the referenced sections of the Draft Initial Study, all potentially significant impacts to Biological Resources, Cultural Resources and Water Quality would be reduced to a less-than-significant level. Refer to comment responses 3-3 and 3-4 regarding the the Special Use Permit area acreage.
- 10-2 The expansion of the BTC Special Use Area footprint to accommodate parking and staff cabins on the north side of Hardin Flat Road is the result of three conditions: avoidance of cultural resources within the existing Use Permit Area; relocation of structures out of the 100-year floodplain of the South Fork Tuolumne River; and the Tuolumne County code requirement to remove all on-street parking from Hardin Flat Road. Buildings and parking on the north side of Hardin Flat Road are needed to comply with these conditions. As described in the MND/IS and summarized below, the potential environmental impacts of the new location have been analyzed and these studies indicate that the Project will not result in any significant, adverse impacts.

Technical assessments and evaluations were conducted by professional biologists and botanists in cooperation with the Forest Service and the Federal Emergency Management Agency. Resources evaluated include, but were not limited to, aquatic wildlife, terrestrial wildlife, and rare plants. These are analyzed in detail in technical reports that support the MND/IS conclusions and the proposed mitigation measures.

The early- to mid-seral Sierran mixed conifer forest of the BTC site does not represent suitable nesting habitat for the California spotted owl owing to its relatively open canopy and shortage of very large trees. Spotted owls would be expected to forage in forested areas of the BTC site from time to time. The fire resulted in an increased concentration of snags and down woody material favoring owl prey, particularly north of Hardin Flat Road. Individual owls foraging on the site during construction or operation of the Camp may be subjected to periodic noise disturbance, but are highly unlikely to be injured or killed by activities owing to the mobile nature of the species. If a spotted owl were observed on-site during construction, activities would be halted and assessed, limiting the severity of disturbance. Because the BTC site does not offer suitable nesting habitat for the California spotted owl the proposed Project will produce no indirect effects for this species related to reduction in quantity or quality of nesting habitat. With implementation of Mitigation Measures BIO 6 and BIO 8 there would be no adverse effect on California spotted owl.

During 2007 surveys of the South Fork Tuolumne River, four adult Western pond turtles were found about two miles east of the BTC area. There were no turtles observed at the Project site. However it is recognized that the section of the South Fork Tuolumne River that flows

through the BTC site provides suitable aquatic habitat for the western pond turtle. BTC activities with the greatest potential to impact terrestrial habitats include construction of new structures, paths, and parking lots. If the western pond turtle uses habitats of the BTC site, a reduction in quantity and quality of terrestrial habitats would produce, at most, moderate negative effects for this species due to the many other similarly suitable areas of terrestrial habitat in and near the Camp. With implementation of Mitigation Measure BIO-4 there would be no significant adverse effect on the western pond turtle. For the western pond turtle, implementation of the BTC may affect individuals and upland habitats over time, but effects would be negligible and would not lead to a trend toward Federal listing or a loss of viability.

As noted in the rare plant technical report, the presence of the slender-stemmed monkey flower within the Special Use Permit Area has been intermittent. In 2009 seven slender-stemmed monkey flower plants were found occupying a 16-square-foot area along a drainage of Hardin Flat Road. Surveys conducted in 2011 did not observe any slender-stemmed monkey flower plants. Seven subpopulations of slender-stemmed monkey flower were identified within the boundaries of the BTC analysis area during 2015 botanical surveys. Slender-stemmed monkey flower is an annual herb that reproduces by seed and is relatively short-lived and subject to annual changes in moisture regime. Its presence is not limited to the BTC site. Known occurrences of slender-stemmed monkey flower on the Groveland Ranger District range in size from five to several thousand individuals and are well distributed through the southeastern half of the District and sporadically distributed through the southwestern half of the District.

The combination of effects from all of the proposed BTC activities associated with the Project are not expected to cause long-ranging adverse cumulative effects to slender-stemmed monkey flower. Assuming the subpopulations observed on the site remain, any loss of individuals could adversely affect the continued existence of this small population. However as evidenced by the presence of the population pre-Rim fire, this population has persisted in this location under nearly identical circumstances as proposed with the reconstruction of BTC. In the unlikely event that the population is extirpated, it is not anticipated that it would result in a trend toward federal listing, since at least 38 occurrences would remain, many of which are much more robust populations. With implementation of Mitigation Measure BIO-5 there would be no adverse effect on slender-stemmed monkey flower.

The intensity of use related to BTC has been recognized historically and is consistent with the Developed Recreation Area designation for BTC in the Stanislaus National Forest's Forest Plan Direction (March, 2017). The Forest Plan Direction provides, as defined in the National Forest Management Act, management direction for multiple use goals and objectives on the Stanislaus National Forest, management prescriptions, and their associated standards and guidelines for attaining them. The expansion of the BTC Special Use Area has been analyzed in the context of the Forest Plan Direction (March, 2017).

- 10-3 The entire Special Use Permit Area has been surveyed for the existence of cultural resources. In working with Tribal representatives, the site planning for the reconstruction of BTC avoids



- all cultural resources in the Special Use Permit Area that do exist. In addition, Mitigation Measure CUL 1 will further protect the integrity of cultural resources by removing selected camp facilities that did not burn during the Rim fire without any ground disturbance. Installation of buck-and-pole fencing called for in Mitigation Measure CUL-3 will further protect those resources. Mitigation Measure CUL-2 will assure that should any new cultural resources be found during construction, the proper protocol is established to protect them.
- 10-4 Comments noted. Mitigation Measures HYDRO-5, HYDRO-6, HYDRO-7, and HYDRO-8 address how the reconstruction and operations of BTC will protect water quality and meet the Riparian Conservation Area goals and objectives established by the Stanislaus National Forest in the Forest Plan Direction (March, 2017). The Draft Initial Study Appendix A, Table A-1 outlines more specifically the related management strategy requirements for BTC to implement that reflect the Riparian Conservation Area Goals and Objectives of the Forest. In Appendix A, Table A-2 lists the BMPs applicable to protecting water quality of the South Fork Tuolumne River.
- The Rim Fire resulted in a dramatic change to the vegetation mosaic in and around BTC and the South Fork Tuolumne River. Working in partnership, the Forest Service and City of Berkeley developed the project with the following baseline considerations: 1) no increase in camper capacity/occupancy; 2) consistency with current laws and regulations including E.O. 11988, Floodplain Management (FEMA 1977a); 3) consistency with the policies, standards, and guidelines of the Forest Plan Direction (March 2017); and 4) provision for the protection of all cultural resources. It should be noted that, as presented in Figure 5 included in the Draft Initial Study, the proposed BTC revegetation plan emphasizes, among other goals, dense riparian vegetation and conifers shading the river, Thimbleberry Creek, and related drainages.
- 10-5 Opinion noted. As was historically the case, development and use of recreation facilities such as BTC continues to be, by policy, encouraged on public lands by the Forest Service. The BTC Project is consistent with Forest Service policy encouraging organization camp facilities and programs that promote environmental education, hiking, fishing, and similar forest-related activities (FSH 2709.14, Policy 13.2). The Project is also consistent with Forest Service objectives to provide, under special use authorization, sufficient suitable facilities and services that supplement or complement those provided by the private sector, State, and local government on private land and the Forest Service on NFS land to meet public needs to facilitate the use, enjoyment, understanding, and appreciation of natural resource settings in National Forests (FSM 2340.2). Reconstruction of BTC in combination with the implementation of revegetation actions (see Figure 5) and the mitigation measures outlined will balance recreation and outdoor education use with habitat protection and enhancement.
- 10-6 Comment noted. While alternative relocation sites were discussed with Stanislaus National Forest immediately after the Rim Fire, no such equivalent sites exist on the Forest that would

be suitable for BTC and that would meet the City's purpose and need for BTC. The Forest Plan Direction (March, 2017) does not preclude developed recreation areas being located within Riparian Conservation Areas. Recognition of the BTC setting within a Riparian Conservation Area already exists within the Forest Plan Direction (March, 2017). Riparian Conservation Area goals and objectives have been integrated into the management requirements and mitigation measures for the reconstruction of BTC and in its long-term operations.

Berkeley Tuolumne Camp Permit (46690) CEQA  
Negative Declaration

October 1, 2018

**11-1** The decision to rebuild Berkeley's Tuolumne Camp is an important one but I would suggest that the City take this opportunity to evaluate the mission of this resource and the people it serves.

I agree that summer camp is a positive, often transformative, experience. Particularly for city dwellers, the week long retreat is a time for fellowship, discovery and relaxation. Tuolumne Camp appears to offer all of this and more. Unfortunately, it is serving only about 2,460 Berkeley residents each season (based on a 4,100 yearly attendance, 60% of whom live in Berkeley). That is slightly more than 2% of the Berkeley population. Yet, all Berkeley residents contribute to the camp's rebuilding and maintenance via city taxes.

**11-2** Who attends Tuolumne Camp? I visited the Friends of Tuolumne Camp Facebook page, and was surprised to see an extremely homogeneous group of campers. All the photos I found depicted white families enjoying camp life. I think I found one African American individual in the gallery of photos posted. These photos of campers did not reflect the racial diversity of Berkeley. I imagine that they neither represent the economic or social diversity of our city.

The following data is compiled from information provide by the City of Berkeley on the 2015 attendance of Tuolumne Family Camp:

Estimated yearly usage: 4,000  
60% Berkeley residents / 40% non-residents  
Estimated yearly usage by Berkeley residents: 2,400 (2.033%)  
The median income for a family was \$102,976  
59.5% White  
19.3% Asian American  
10% African American  
10% Hispanic  
.4% Native American

Berkeley's Parks, Recreation & Waterfront Department appears committed to rebuilding Tuolumne Camp to its former glory. The Friends of Tuolumne Camp is a vital community organization lending its passion and support. I would ask that they reconstruct the camp to serve today's Berkeley and *all* of its residents. The following pages demonstrate how Tuolumne Camp is missing that mark.

Sincerely,  
Cameron Woo  
Berkeley resident  
cameron@thebark.com

11-3

IN RESPONSE TO  
Berkeley Tuolumne Camp Permit (46690) CEQA  
Negative Declaration  
10.1.18

I have a special interest in the rebuilding of Berkeley's Tuolumne Camp and making sure that it is a resource that is shared and open to all residents of the city.

Reading through the City of Berkeley Tuolumne Camp Permit (46690) Society, Culture and Economy SPECIALIST REPORT brought to my attention what seems to be the mission of BTC (Berkeley Tuolumne Camp).

On page 12 of the report, it describes the priorities listed under the permit granted by the Forest Service as amended in 1976 that — “establishes priorities for campers served.” It lists three classifications:

Priority 1 — ‘at-risk’, disabled or low-income/scholarship campers

Priority 2 — youth and educational programs

Priority 3 — family campers

Table (1.01-9) shows the typical usage by these groups for the years 2005–2013:

#1 Priority (At-Risk, Low-Income, Disabled) 196 campers / 4.85% of BTC

#2 Priority (Youth Educational) 182 campers / 4.5% of BTC

#3 Priority (Family Campers) 3,367 campers / 90.6% of BTC

These numbers point out that the majority of visitors to Berkeley Tuolumne Camp (BTC) are family campers and not the number 1 priority group of low-income or at-risk residents. I can understand the report's premise that the BTC family camp is used as an income generating enterprise that provides an annual surplus of \$564,000 but where does that money go? Is it funding outdoor and educational experiences for the priority groups 1 and 2? It doesn't appear so.

I question the effort put forth by the City of Berkeley in advertising BTC's services and availability, and, in particular, promoting its use by those community members who are categorized in priority groups 1 and 2. I understand that there have been individual and family scholarships available that have gone unused in years past — that should not be the case.

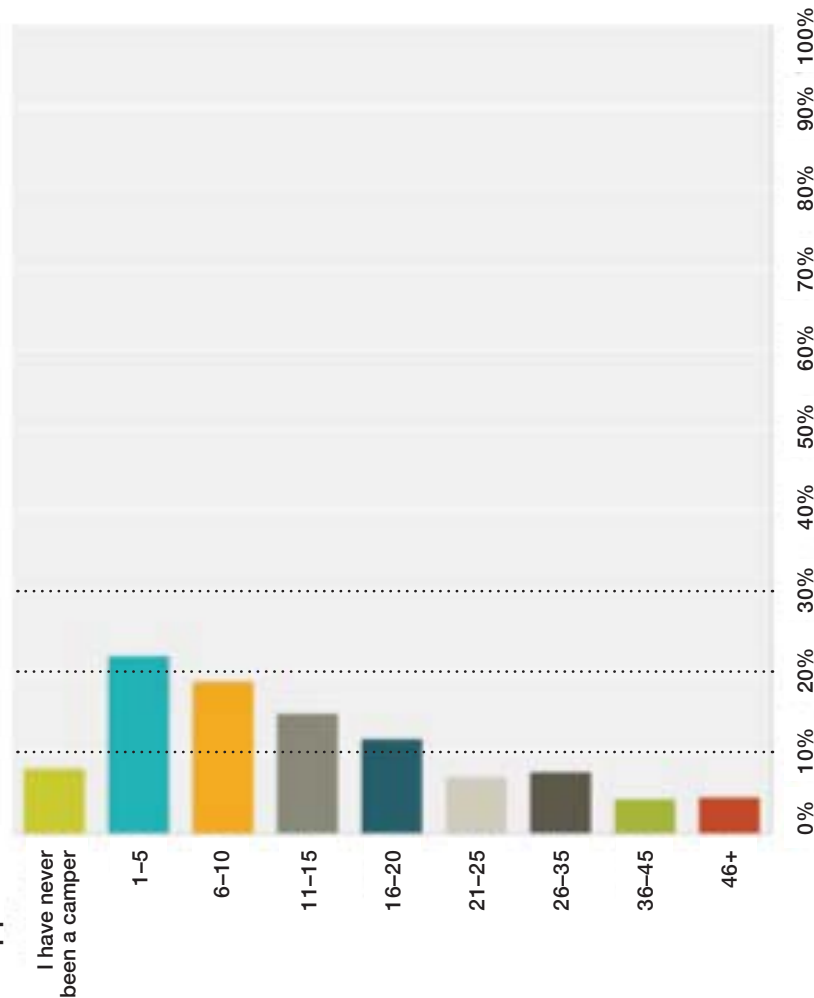
I would ask that the City of Berkeley do better at meeting Tuolumne Camp's mission and make it more inclusive and open to all residents of Berkeley. And to responsibly use the half-million dollars in annual revenue towards outdoor experiences and education for the two priority groups identified — at-risk/low-income residents and youth education in general.

The survey results below conducted by the Berkeley Parks, Recreation & Waterfront Department in Spring 2015, show that a significant number of campers attend Tuolumne Camp year after year, thus limiting the number of new participants. 59% of campers polled have attended the camp for 11 or more years. 15% have attended Tuolumne Camp for 21–35 years. This data shows that even a smaller number of (unique) individuals have access to the camp than the yearly attendance suggests. Conclusion: a significant portion of campers are the same people year after year, and many of those people are non-Berkeley residents.   
 –CAMERON WOO

## Q5: Which of the following categories best represents your total years as a camper at Tuolumne Camp?

Answered: 432 Skipped: 8

Those polled: 234 Berkeley residents  
 198 Non-Berkeley residents



### **Letter #11 Response: Cameron Woo**

- 11-1 Commented noted. See Comment Letter #6, Responses 6-1 and 6-2.
- 11-2 Commented noted. See Comment Letter #6, Responses 6-1 and 6-2.
- 11-3 Commented noted. See Comment Letter #6, Responses 6-1 and 6-2.

### 3.4 PUBLIC HEARING ORAL COMMENTS – SEPTEMBER 12, 2018

1/2

BTC CEQA Public Hearing 9/12/18

## Public Hearing

#1 Phil Coffin 1993-2001, employee,  
Echo Lake Camp Manager  
→ Well researched, complete document.  
FOBTC Supports Project.

- Forest Restoration

pg. 113 - BMPs

- water during summer - protection  
of existing trees.

- Buffering around re-sprouted  
oaks, dogwoods, etc.

- Dust Mitigation watering → can <sup>they</sup> be  
expanded to water new/protected  
areas? (yes, during construction)

#2 Richard Thomison, FOBTC.  
→ Support adoption of MND

#3 Cameron Woo

use after completion. P.12 → Priority levels

⊕ w/i USFS ⊕ Table summary -

5% priority 1, 96% family campers.

Where does profit go?



2/2

#4 Kathy Brown, in favor of ND of BTC  
mostly construction related MND  
p. 81 water tank 240,000  
p. 90 water tank 280,000 Gallons.

**CLOSE**

~~Question~~

**Public Hearing Oral Comments Response: Phil Coffin**

PH-1 Comments noted.

**Public Hearing Oral Comments Response: Richard Thomison**

PH-2 Comments noted.

**Public Hearing Oral Comments Response: Cameron Woo**

PH-3 Comments noted. See Comment Letter 6, Responses 6-5 and 6-2.

**Public Hearing Oral Comments Response: Kathy Brown**

PH-4 The approximately 240,000 gallon water availability is a requirement specifically for fire protection and does not include potable water storage for daily BTC operations. The total water storage is estimated to be 280,000 gallons.

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1064898.1



**City of Berkeley  
Parks Recreation & Waterfront**

**NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION  
FOR THE CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT**

|                                    |                                                                                                                          |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>PROJECT TITLE:</b>              | <b>City of Berkeley Tuolumne Camp Permit (46690) Project</b>                                                             |
| <b>PROJECT LOCATION;</b>           | <b>Stanislaus National Forest, Groveland Ranger District<br/>331585 Hardin Flat Road, Groveland, Tuolumne County, CA</b> |
| <b>PROJECT SPONSOR:</b>            | <b>City of Berkeley (City)</b>                                                                                           |
| <b>DATE OF PUBLIC NOTICE:</b>      | <b>September 1, 2018</b>                                                                                                 |
| <b>PUBLIC REVIEW PERIOD:</b>       | <b>September 1, 2018 to October 1, 2018</b>                                                                              |
| <b>DATE OF PUBLIC HEARING:</b>     | <b>September 12, 2018, 7:00 p.m.</b>                                                                                     |
| <b>LOCATION OF PUBLIC HEARING:</b> | <b>Frances Albrier Community Center<br/>2800 Park Street, Berkeley, CA 94702</b>                                         |

**Project Description:** The Berkeley Tuolumne Camp (“Camp”) is a family camp that was operated by the City of Berkeley from 1922 until August 25, 2013, when it was largely destroyed by the Rim Fire. Of the 138 structures at the Camp, 19 survived the fire. Additionally, the forest canopy that once existed over much of the central camp area was destroyed by the Rim Fire and will take 20 years or more to provide the natural shading it once did. The Camp is operated under a Special Use Permit from the Stanislaus National Forest, Groveland Ranger District. The current permit is for approximately 14 acres located on the southerly side of Hardin Flat Road.

The proposed Project would obtain a 30-year term Special Use Permit (SUP) from the Forest Service that will allow the City to reconstruct Camp facilities to current code and operate the Camp much as it was prior to the Rim Fire. The new SUP would be expanded to approximately 30 acres and would include two trails known as the Small Falls and Sugar Pine Trails that extend away from the main camp. About 14.5 acres of the permit area is proposed to be developed for parking, the main camp area, staff camp area, all support facilities and the Sugar Pine and Small Falls Trails. BTC would be designed to operate at a capacity that matches, but does not exceed, the pre-fire overnight staff and camper capacity of 360 individuals. The SUP would be issued for a term period of 30 years and may be renewed upon review and approval by the Forest Service.

**Environmental Review:** An Initial Study (IS) has been prepared under the requirements of the California Environmental Quality Act (CEQA) for review and action by the City. The IS evaluates the potential environmental impacts of the proposed Project. Based on the results of the IS prepared according to CEQA Guidelines, it has been determined the Project will not have a significant effect on the environment and a Mitigated Negative Declaration (MND) has been prepared. The Project has been modified to incorporate mitigation measures identified in the IS that will reduce any potentially significant impacts to a less-than-significant level.

**Public Review:** The Draft MND/IS is available for public review at the City office at 2180 Milvia Street, 3<sup>rd</sup> Floor, Berkeley, CA 94704. The MND/IS is also available on the City website at:

[https://www.cityofberkeley.info/Parks\\_Rec\\_Waterfront/Recreation/Tuolumne\\_Camp.aspx](https://www.cityofberkeley.info/Parks_Rec_Waterfront/Recreation/Tuolumne_Camp.aspx)

Any interested party may comment on the proposed MND/IS. All comments received will be considered by the City prior to finalizing the MND/IS and making a decision on the Project. Written comments must be received no later than 4:00 pm on **October 1, 2018** and sent to:

Liza McNulty, Program Manager  
City of Berkeley  
Parks Recreation & Waterfront  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704  
Email: [lmcnulty@cityofberkeley.info](mailto:lmcnulty@cityofberkeley.info)

## MITIGATED NEGATIVE DECLARATION

### PROJECT DESCRIPTION

The Berkeley Tuolumne Camp (“Camp”) is a family camp that was operated by the City of Berkeley from 1922 until August 25, 2013, when it was largely destroyed by the Rim Fire. Of the 138 structures at the Camp, 19 survived the fire. Additionally, the forest canopy that once existed over much of the central camp area was destroyed by the Rim Fire and will take 20 years or more to provide the natural shading it once did. The Camp is operated under a Special Use Permit from the Stanislaus National Forest, Groveland Ranger District. The current permit is for approximately 14 acres located on the southerly side of Hardin Flat Road.

The proposed Project would obtain a 30-year term Special Use Permit (SUP) from the Forest Service that will allow the City to reconstruct Camp facilities to current code and operate the Camp much as it was prior to the Rim Fire. The new SUP would be expanded to approximately 30 acres and would include two trails known as the Small Falls and Sugar Pine Trails that extend away from the main camp. About 14.5 acres of the permit area is proposed to be developed for parking, the main camp area, staff camp area, all support facilities and the Sugar Pine and Small Falls Trails. BTC would be designed to operate at a capacity that matches, but does not exceed, the pre-fire overnight staff and camper capacity of 360 individuals. The SUP would be issued for a term period of 30 years and may be renewed upon review and approval by the Forest Service.

### PROJECT LOCATION

Berkeley Tuolumne Camp  
Stanislaus National Forest  
Groveland Ranger District  
331585 Hardin Flat Road  
Groveland, Tuolumne County, CA

### PROJECT SPONSOR

City of Berkeley  
Department of Parks, Recreation and Waterfront  
2180 Milvia Street  
Berkeley, California 94704

## FINDING

The Project will not have a significant effect on the environment based on the Initial Study prepared according to CEQA Guidelines. Mitigations have been incorporated into the Project to reduce the identified potentially significant impacts to a less-than-significant level.

## POTENTIALLY SIGNIFICANT IMPACT

The attached Initial Study indicates that the Project could adversely affect the environment. Potentially significant impacts were identified and are presented below.

## MITIGATION MEASURES

In the interest of reducing the potential impact to the point where the net effect of the Project is insignificant, mitigation measures are recommended. A discussion of the potential impacts of interest and the associated mitigation measures is provided below.

## AESTHETICS

**Impact: Without specific material controls for structures and screening measures, the character of the BTC development would not meet the Visual Quality Objectives (VQO) of the Stanislaus National Forest's *Forest Plan Direction 2017*.**

### Mitigation Measures:

**AES-1** In order to meet a near-term Visual Quality Objective of Modification the BTC Facilities shall be designed to follow the *Design Narrative / Built Environmental Image Guidelines* (2M Associates 2017) for the project. Design documents (90 percent completion) will be submitted to the Forest Service for review and comment for consistency with the guidelines.

**AES-2** In order to screen project facilities and meet a Visual Quality Objective of Partial Retention a revegetation plan for the Hardin Flat road corridor, burned areas, and areas disturbed by construction will be prepared and implemented emphasizing:

- Feathered screening between Hardin Flat Road and BTC facilities.
- Dense riparian vegetation and conifers shading of the river, Thimbleberry Creek, and related drainages.

Planting program design documents (90 percent completion) will be submitted to the Forest Service for review and comment for consistency Forest Service standards.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measures.

**Impact: Unshielded, cobra-type overhead area lighting existed at the main sports courts. Installing this type of lighting with the proposed Project could create light and glare along Hardin Flat Road which is a potentially significant impact.**

### Mitigation Measures:

**AES-3** To minimize visibility and to reduce the potential impacts of lighting as seen from Hardin Flat Road:

- All outdoor lighting shall be dark sky-compliant and consistent with California Green Building Standards Code Section 5.106.8 Light Pollution Reduction
- All light fixtures shall include shrouds (either fixed or adjustable), other shielding, or be directed in such a way as to block direct light as seen from Hardin Flat Road.
- Lighting that is not required during nighttime hours shall be controlled by the use of timed switches and/or motion detector activation controls so lights are only on when necessary.

**AES-4** To minimize visibility and to reduce the potential impacts of glare as seen from Hardin Flat Road:

- Structures, including roofs, shall use non-reflective, earth-toned materials that match the soil and vegetation colors of the backdrop characteristic landscape.
- All structure windows and doors shall use non-reflective glass.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measures.

## AIR QUALITY

**Impact: Construction of Berkeley Tuolumne Camp would result in short-term air pollution emissions as a result of construction activities during each development activity.**

### Mitigation Measure:

**AIR-1** A construction-phase Dust Control Plan (DCP) shall be prepared prior to the start of any Project construction activity. The DCP shall include all basic emission control measures (listed below) and any additional measures applicable to the project and necessary to reduce off-site migration of fugitive dust:

#### *Basic Control Measures*

- All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.
- All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
- All land clearing, grubbing, scraping, excavation, land leveling, grading, cut & fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
- With the demolition of buildings, all exterior surfaces of the building shall be wetted during demolition.
- When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.



- All operations shall limit or expeditiously remove the accumulation of mud or dirt from Hardin Flat Road at the end of each workday. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions; use of blower devices is expressly forbidden.)
- Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.
- Any site with 150 or more vehicle trips per day shall prevent carryout and track-out.

*Enhanced Control Measures (as necessary and appropriate)*

- Limit traffic speeds on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways from areas with a slope greater than one percent.

*Additional Control Measures (as necessary and appropriate)*

- Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site.
- Install wind breaks at windward side(s) of construction areas.
- Suspend excavation and grading activity when winds exceed 20 mph, or when fugitive dust exiting the site exceeds the 20 percent opacity limit, regardless of wind speed.
- Limit area subject to excavation, grading, and other construction activity at any one time.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measure.

**Impact:** There may be occasional open burning associated with either construction or ongoing vegetation management activities on the Project site.

**Mitigation Measure:**

**AIR-2** Acquire burn permits from the Tuolumne County Air Pollution Control District. The California Air Resources Board provides daily information on "burn" or "no burn" conditions. Design and implement burn plans to minimize particulate emissions. Notify the Groveland District Wildlife Biologist prior to pile burning to minimize disturbance to protected or sensitive species.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measure.

## BIOLOGICAL RESOURCES

**Impact:** The Project could adversely affect the western pond turtle.

**Mitigation Measures:**

**BIO-1** Conduct a pre-construction survey to identify if the western pond turtle are present within the construction areas.

**BIO-2** BTC project construction workers shall be trained regarding the western pond turtle, including identification, habitat requirements, and the importance of minimizing physical disturbance to individuals during construction.

**BIO-3** Major site grading and underground utility construction activities shall be completed during the dry season to minimize risk of harming or displacing overwintering turtles.

**BIO-4** If western pond turtles are discovered in the immediate vicinity of construction activity, construction activity shall cease and a qualified biologist will relocate the turtle to suitable habitat outside of the BTC Project area.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measures.

**Impact:** The slender-stemmed monkey flower may be impacted during construction activities.

**Mitigation Measure:**

**BIO-5** Conduct a pre-construction plant survey the spring prior to Project construction. Flag and avoid new occurrences of sensitive plants. Notify the Groveland Ranger District Botanist to determine course of action.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measure.

**Impact:** Construction and/or operation of BTC could adversely affect terrestrial wildlife

**Mitigation Measures:**

**BIO-6** Conduct pre-construction nest surveys for migratory birds, California spotted owls, and northern goshawks within ¼ mile of construction activities implemented during the breeding season (February 15 to September 15). If active nests are discovered, protective measures would be implemented in consultation with a USFS biologist.

**BIO-7** Pre-activity surveys roosting bats would be conducted at all suitable roost trees or structures to be removed by project activities. If any FSS bat species are discovered during the surveys, nest and roost trees would be protected unless the trees pose an eminent safety concern.

**BIO-8** If any Forest Service Sensitive (FSS) or Federal-listed terrestrial wildlife species are discovered within the BTC project site area prior to or during ground disturbance and construction activities, such activities shall cease and a USFS biologist shall be contacted for recommendations as to how to proceed.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measures.

**Impact:** Construction activities could introduce invasive plants to BTC.

**Mitigation Measure:**

**BIO-9** Follow applicable FSM Manual 2080 Noxious Weed Management related to construction activities to include, but not be limited to:

- All vehicles and equipment that go off road must be free of non-native soil, mud (wet or dried), seeds, vegetative matter or other debris that could contain seeds in order to prevent new infestations of noxious weeds in the project area. Dust or very light dirt, which would not contain weed seed, is not a concern.

- Flag and avoid noxious weed populations if present. In places where noxious weeds cover large areas, mechanical treatments can be done within sites, but equipment must be cleaned before leaving the area.
- Do not stage equipment, material or personnel in areas with noxious weed infestations.
- After using equipment in infested areas, clean equipment so that it is free of soil, seeds, vegetative matter or other debris prior to being moved off site.
- Use certified weed-free mulches where available, mulches with low risk of weed introduction where certified weed-free is not available, and certified weed-free seed mixes. Seed mixes must conform to the Region 5 Policy on the Use of Native Plant Material in Restoration or Revegetation Projects.
- Where soil stabilization is needed, use crushed rock, drain rock, riprap and soil fill obtained from weed-free sources.
- Treat invasive plants and other weeds using manual (hand or mechanical) methods only.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measure.

## CULTURAL RESOURCES AND TRIBAL CULTURAL RESOURCES

**Impact:** There is the potential to impact cultural resources.

### Mitigation Measures:

**CUL-1** Remove specific existing structures to protect sensitive resources.

**CUL-2** Cultural resources shall be protected through application of Standard Protection Measures as determined by Programmatic Agreement Among the USDA, Forest Service, Pacific Southwest Region (Region 5), California State Historic Preservation Officer, Nevada State Historic Preservation Officer and the Advisor Council on Historic Preservation Regarding the Process for Compliance with Section 106 of the National Historic Preservation Act for Management of Historic Properties by the National Forests of the Pacific Southwest Region (Regional PA), signed February 2013. In addition:

- Natural plant succession will be allowed to occur within cultural resource site boundaries.
- Notify the Forest Service cultural resource specialist if a new cultural resource site is discovered during project implementation and cease all activities within 150 feet of the resource until consultations are completed.

**CUL-3** Buck and pole fencing shall be installed to protect cultural resources. Fencing shall be constructed by hand with no excavation.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measures.

## GEOLOGY AND SOILS

**Impact:** There is the potential for seismic activity which could cause human injury or damage to structures and infrastructure facilities at BTC.

**Mitigation Measure:**

**GEO-1** Detailed geotechnical investigations shall be performed prior to the design of all buildings and the pedestrian/utility bridge. Buildings and bridges shall be designed to withstand seismic and soil loads consistent with California Building Code.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measure.

**Impact:** There is the potential for soil erosion during construction activities.

**Mitigation Measure:**

**GEO-2** To minimize soil erosion during construction activities, follow FSM 2550 Soil Management R5 Supplement (USDA 2012) and Soil Management Practices identified in the Forest Plan Direction (USDA 2017, p. 57-58).

**Residual Impact:** Less than significant with implementation of the recommended mitigation measure.

## HYDROLOGY AND WATER QUALITY

**Impact:** Construction activities have the potential to increase levels of pollution in runoff that can create violations in water quality standards.

**Impact:** Camp operations have the potential to increase levels of pollution in runoff as well as produce pollutants due to trash, food wastes, spills of maintenance fluids, waste products from maintenance operations and leaks from parked vehicles.

**Mitigation Measures:**

**HYDRO-1** During detail design of BTC facilities and related site improvements, submit the US Army Corps of Engineers Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act permit applications and associated documentation to the Forest Service for review and comment.

**HYDRO-2** Prior to construction, update the floodplain map to reflect updated base mapping, base flood elevations, final structure placement, and finished floor elevations and submit to the Forest Service and FEMA for review and acceptance.

**HYDRO-3** During detail design of BTC facilities to be constructed and related site improvements, submit permit applications and associated documentation for the following to Forest Service for review and comment:

- a. California Department of Fish and Wildlife (CDFW): Application, plans, and specifications for work to obtain a Stream Alteration Agreement pursuant to Fish and Game Code sections 1600 *et seq.*

- HYDRO-4** Prior to BTC operations, provide a Camp Evacuation Plan for approval by the Forest Service that incorporates protocols and procedures for evacuation in response to summer season storm and/or winter and spring season rain-on-snow or sudden snowmelt events that may lead to high water flows.
- HYDRO-5** During detail design of BTC facilities and related site improvements, submit permit applications and associated documentation for the following to Forest Service for review and comment:
- a. California Water Quality Control Board, Division of Drinking Water: Application, plans, and specifications for permit for surface water appropriation and treatment for drinking water under the Porter-Cologne Water Quality Control Act of 1975 and Safe Drinking Water Act (Pub. L. 93-523).
  - b. Tuolumne County On-site Sewage Treatment and Disposal System Certification including percolation tests and soil profiles, system design plans and specifications (plot plan; grading plan; description of groundwater and soils; description of monitoring devices, system operation and function; and site evaluation and testing) necessary to obtain Certification of an on-site sewage treatment and disposal system pursuant to Tuolumne County Code Section 13.08.
- HYDRO-6** Prior to the beginning (April) and after each BTC summer operating period (October), test the water quality of the South Fork Tuolumne River both at the Hardin Flat Road bridge and at the downstream boundary of the permit area. File results with the Groveland Ranger District.
- HYDRO-7** Protect beneficial uses of water through implementation of Best Management Practices (BMPs) in accordance with Regional Water Quality Management Plan (USDA 2011), the National BMPs for Water Quality Management on National Forest System Lands (USDA 2012), and the Forest Plan Direction (USDA, 2017).
- HYDRO-8:** Follow Forest Plan Direction (USDA, 2017) for protection of Riparian Conservation Areas (RCAs) through compliance with the Riparian Conservation Objectives (RCOs). The project shall:
- a. Prepare an Erosion Control Plan / Stormwater Pollution Prevention Control Plan and BMP checklist as part of the construction documentation for Forest Supervisor approval prior to ground-disturbing activities. Reference Appendix A actions.
  - b. Prior to construction activities, delineate riparian zones around all streams and special aquatic features within the permit area to be retained. Exclude ground-disturbing mechanized equipment from operating within riparian zones to be retained.
  - c. Clean equipment used for instream work prior to entering the water body. Remove external oil, grease, dirt and mud from the equipment and repair leaks prior to arriving at the project site. Inspect all equipment before unloading at site. Inspect equipment daily for leaks or accumulations of grease, and correct identified problems before entering streams or areas that drain directly to water bodies. Remove all dirt and plant parts to ensure that noxious weeds and aquatic invasive species are not brought to the site.
    - Locate construction access perpendicular to the channel and minimize the number of channel crossings and channel damage. Upon completion of use, repair damage to the stream course, including banks and channels, to maintain a hydrologic ally stable channel.

- Remove all project debris from the stream in a manner that will cause the least disturbance.
  - Minimize streambank and riparian area excavation during construction: stabilize adjacent areas disturbed during construction using surface cover (mulch), retaining structures, and/or mechanical stabilization materials.
  - Keep excavated materials out of channels, floodplains, and wetlands. Install silt fences or other sediment- and debris-retention barriers between the water body and construction material stockpiles and wastes. Dispose of unsuitable material in approved waste areas outside of the RCA.
  - Conduct operations during the least critical periods for water and aquatic resources: when streams are dry or during low-water conditions.
- d. Locate equipment staging and mitigate by use of erosion prevention measures to avoid sedimentation effects and delivery to a watercourse.
- e. Implement erosion control measures as needed on all lands disturbed by construction following completion of construction. Reference Appendix A actions.
- f. Conduct watering during construction for dust abatement using approved existing water source locations. Treat construction approaches and staging areas to prevent sediment production and delivery to a watercourse.
- Check all water-drafting vehicles daily and repair as necessary to prevent leaks of petroleum products from entering RCAs. Water-drafting vehicles will contain petroleum-absorbent pads, which are placed under vehicles before drafting. Water-drafting vehicles will contain petroleum spill kits. Dispose of absorbent pads according to the Hazardous Response Plan.
  - Use screening devices for water drafting pumps. Use pumps with low entry velocity to minimize removal of aquatic species, including juvenile fish, amphibian egg masses and tadpoles, from aquatic habitats. Pump intake screening specification will be provided and put in the project file.
  - Prohibit water drafting by more than one truck at a time.
- g. Allow temporary refueling and servicing only at approved construction staging sites. Rehabilitate temporary staging, parking, and refueling/servicing areas immediately following use.
- Prepare a Spill Prevention and Containment and Counter Measures (SPCC) plan where total oil products on site in above-ground storage tanks exceed 1320 gallons. Review spill plans to ensure they are up-to-date.
  - Install contour berms and trenches around vehicle service and refueling areas, chemical storage and use areas, and waste dumps to fully contain spills. Use liners as needed to prevent seepage to groundwater.
  - Report spills and initiate appropriate clean-up action in accordance with applicable state and Federal laws, rules and regulations. The hazardous materials coordinator's name and phone number will be available to Forest Service personnel who administer or manage activities utilizing petroleum-powered equipment.
  - Remove contaminated soil and other material from Forest Service lands and dispose of this material in a manner according to controlling regulations.
- h. Place burn piles a minimum of 50 feet away from the South Fork Tuolumne River, Thimbleberry Creek, or intermittent streams and 25 feet away from ephemeral drainages unless otherwise approved by a hydrologist and/or soil scientist. Locate

piles outside of areas that may receive runoff from roads. Burn piles in the fall or winter.

- i. Conduct implementation and effectiveness monitoring using the Best Management Practices Evaluation Program and the National Core Monitoring Protocols (FS - 990b) as a supplement.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measure.

#### LAND USE PLANNING

**Impact: Reconstruction of BTC could cause conflicts with conservation of habitat.**

**Mitigation Measure:**

**LUP-1** Submit all plans to the Forest Service for consistency review with the *Forest Plan Direction* and prior to Camp construction.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measure.

#### NOISE

**Impact: The amplified noise emissions from the BTC stage speaker system could result in the exceedance of the Tuolumne County General Plan Noise Element standard for maximum allowable noise exposure for stationary noise sources which could adversely affect nearby residences.**

**Mitigation Measure:**

**NOISE-1** The speaker system for the BTC stage shall be designed to ensure it does not exceed noise levels of 50  $L_{eq}$ , dB.

**Residual Impact:** Less than significant with implementation of the recommended mitigation measure.

## INITIAL STUDY AND ENVIRONMENTAL REVIEW CHECKLIST

### 1.0 PROJECT INFORMATION

**Project Title:** City of Berkeley Tuolumne Camp Permit (46690) Project

**Lead Agency Name and Address:** City of Berkeley  
Department of Parks, Recreation and Waterfront  
2180 Milvia Street  
Berkeley, California 94704

**Contact Person and Phone Number:** Liza McNulty  
Phone: 510-981-6437  
Email: lmcnulty@ci.berkeley.ca.us

**Project Location:** Berkeley Tuolumne Camp  
Stanislaus National Forest  
Groveland Ranger District  
331585 Hardin Flat Road  
Groveland, Tuolumne County, CA  
See Figure 1

**Project Sponsor's Name and Address:** City of Berkeley  
Department of Parks, Recreation and Waterfront  
2180 Milvia Street  
Berkeley, California 94704

**Responsible Agencies:** Stanislaus National Forest  
Groveland Ranger District  
331585 Hardin Flat Road  
Groveland, Tuolumne County, CA

Department of Homeland Security  
Federal Emergency Management Agency  
Region IX  
1111 Broadway, Suite 1200  
Oakland, CA 94706-4052

**General Plan Designation:** Public

**Zoning Designation:** Public



## 2.0 PROJECT BACKGROUND

The Berkeley Tuolumne Camp (BTC or ‘Camp’) was in continuous operation for 91 years before being substantially destroyed in August 2013 by the Rim Fire. Only 19 of the previously existing 128 structures in the Camp survived the fire.

Founded in 1922, the BTC was used as a family institution since its inception. Though not the first public municipal camp established in the Stanislaus National Forest, it is the only camp dating to the 1920s that remained in continuous use by a single municipality until the Rim Fire. For 91 years it has been enjoyed by thousands and has become a generational tradition for many Berkeley families.

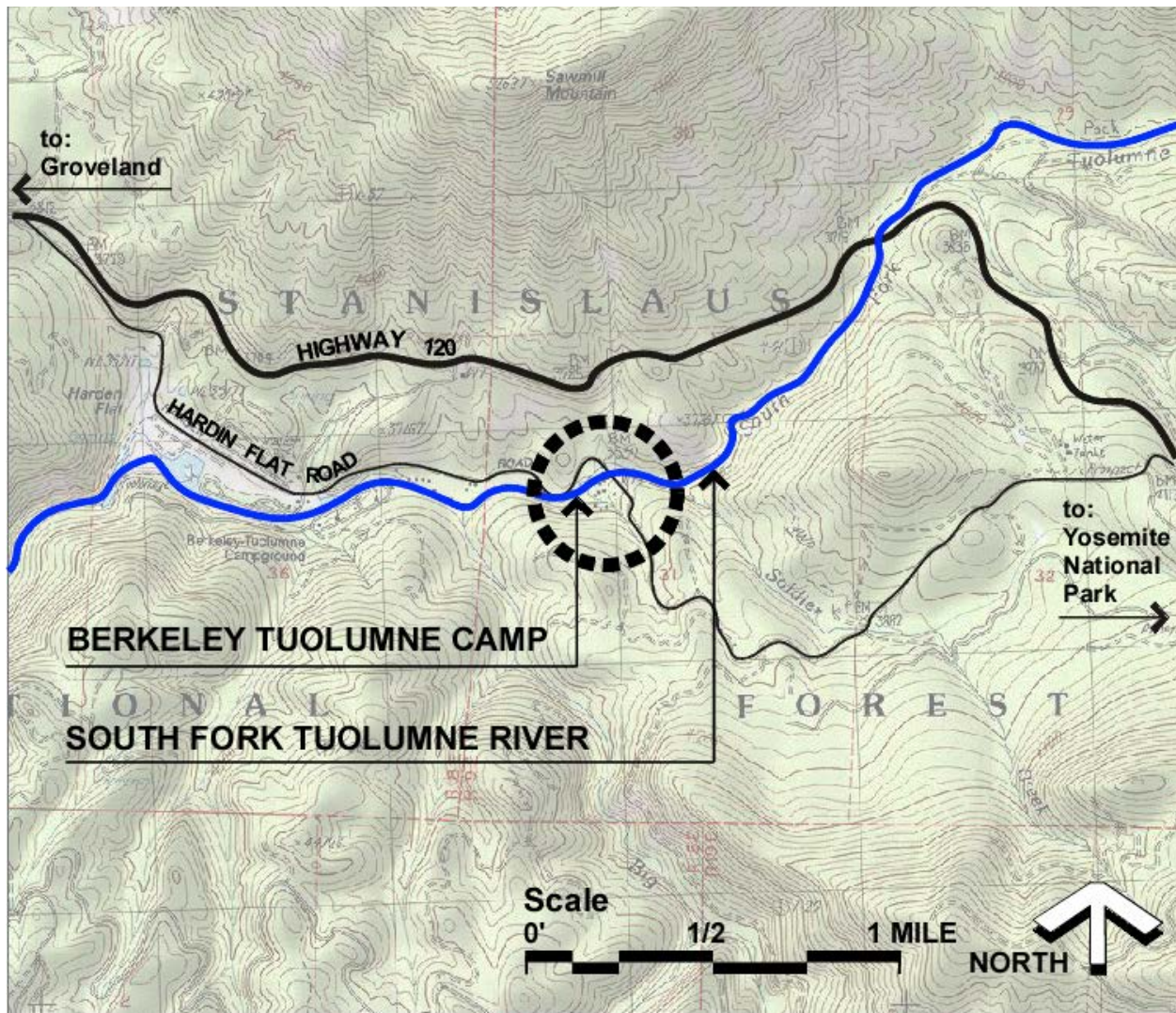


Figure 1: Berkeley Tuolumne Camp Vicinity Map

Congress found that organization camps provide a valuable service to families, young people, and individuals with disabilities by promoting physical, mental, and spiritual health through activities conducted in a natural environment (16 U.S.C. Chapter 81A). The Forest Service Handbook (FSH) provides national policies encouraging organization camp facilities and programs that promote environmental education, hiking, fishing, and similar forest-related activities (FSH 2709.14, Policy 13.2). Also, the Forest Service Manual (FSM) provides direction to issue special use authorizations for state, county, or municipal agencies to develop or manage recreational improvements on National Forest System lands (FSM 2340.3, Policy 1a). Furthermore, when considering competing uses for organizational sites, the Forest Service will prioritize programs that include activities involving people with disabilities or children at risk that are offered either free of charge or for a nominal fee (FSH 2709.14, Policy 13.4).

The City of Berkeley has a strong commitment to service children at risk and individuals with disabilities, as evidenced in its participation in the *2020 Vision* (City of Berkeley), a citywide movement to ensure academic success and well-being for all children and youth growing up in Berkeley, by closing the achievement gap in Berkeley's public schools by the year 2020. The Parks Recreation & Waterfront Department is responsible for furthering the goals of the *2020 Vision* and offers an array of low cost programs that serve a very diverse population of Berkeley families. The Camps Program makes a significant contribution to the department's service to children at risk and individuals with disabilities through the following programs:

- a. **Berkeley Tuolumne Camp** that traditionally functioned as a family camp for much of the summer season, but which also served as a youth camp part of the time with specific outreach programs for at-risk children and youth with disabilities.
- b. **Echo Lake Camp** that traditionally functioned entirely as a residential youth camp operated under permit on NFS lands within the Lake Tahoe Basin Management Unit, and that included specific outreach programs for at-risk children.
- c. **Berkeley Day Camp** conducted in Berkeley City Parks and other state and regional park facilities in the immediate vicinity for children ages 5-12, and that include programming for at-risk children and youth with disabilities.
- d. **Cazadero Performing Arts Camp** (located in Sonoma County) that is owned by the City and leased to a non-profit group and offers summer music programs for young musicians, including at-risk youth, through a robust scholarship program.

The reconstruction of BTC will restore a core element of the City's Camp Programming and help to ensure continuation of the City's commitment to providing its youth and residents access to remote natural environments.

## 2.1 U. S. Forest Service Jurisdiction

The BTC is located on federal land within the Stanislaus National Forest. Under the jurisdiction of the United States Forest Service (Forest Service) the BTC is subject to the *Stanislaus National Forest Land and Resource Management Plan* (USDA Forest Service 1991). The Forest Service completed the Stanislaus National Forest Land and Resource Management Plan (Forest Plan) on October 28, 1991. The Stanislaus

National Forest “Forest Plan Direction” (USDA Forest Service 2017) presents the current Forest Plan management direction, based on the original Forest Plan, as amended. The Forest Plan Direction includes Goals, Strategies and Objectives relevant to this Project (p. 3-5 and 11-14). Presented below are the key goals and objectives guiding project development.

**Aquatic, Riparian, and Meadow Ecosystems and Associated Species:** Maintain and restore habitat to support viable populations, spatial and temporal connectivity for aquatic and riparian species, water quality and desired physical structures and conditions of streams.

**Economic:** Manage the Forest in an economically efficient and cost-effective manner while responding to economic and social needs of the public and local communities.

**Lands:** Consider special uses of the National Forest where public needs cannot be met on private lands and where such uses conform to management direction for the area.

**Recreation:** Provide a wide range of recreation opportunities directed at various experience levels to meet current and projected demand, including campgrounds, hiking trails, picnic areas, trails, etc.

**Water:** Maintain or improve water quality and watershed condition to meet applicable state and federal requirements.

The Forest Plan also includes forest-wide standards and guidelines (p. 31-69) and management area direction that apply within or directly adjacent to this project including: Scenic Corridor with Retention Visual Quality Objective (p. 149); and, Developed Recreation Sites with Roaded Natural Recreation Opportunity Spectrum Class (p. 167-171). Land Allocations with associated management intent and objectives that also apply within or directly adjacent to this project include: CA Spotted Owl Protected Activity Centers (p. 179-182); CA Spotted Owl Home Range Core Area (p. 184-185); Wildland Urban Intermix (p. 185-187); General Forest (p. 186-187); Riparian Conservation Areas (p. 187-191); and, Wildlife Urban Intermix Defense Zone (p. 185).

## 3.0 PROJECT DESCRIPTION

### 3.1 Project Location

The Project site is located within the Stanislaus National Forest on the Groveland Ranger District at 31585 Hardin Flat Road in Tuolumne County, California. It is located at the southern end of the Forest and approximately eight miles from the northern entrance to Yosemite National Park. Access to BTC is from Hardin Flat Road via State Highway 120.

### 3.2 Existing Conditions

BTC is located on both sides of the South Fork Tuolumne River, its central feature, where the river transitions from a canyon form to the wide alluvial Hardin Flat, about 0.5 mile downstream from the Camp. The central camp area is located on a gentle to steep north-facing slope. BTC was substantially destroyed in August, 2013 by the Rim Fire. Of the 128 structures in the Camp, 19 survived the fire.

Additionally, the forest canopy that once existed over much of the central camp area was destroyed by the Rim Fire and will take 20 years or more to provide the natural shading it once did. Figure 2 (map package) shows pre Rim Fire conditions.

BTC is operated under a Special Use Permit from the Stanislaus National Forest (SNF), Groveland Ranger District. The current permit is for approximately 14 acres located on the southerly side of Hardin Flat Road. However, the actual area used by the Camp was approximately 25 acres when the Camp's programmed use areas and the Camp's waste water disposal system and leach field are included.



Dining Hall after fire (10/30/13)



Amphitheater after fire (10/30/13)



Central Camp area after hazard logging (11/5/14)

### 3.3 Proposed Project Program

The proposed Project would obtain a 30-year term Special Use Permit (SUP) from the Forest Service that will allow the City of Berkeley to reconstruct BTC facilities to current code and operate BTC much as it was prior to the Rim Fire. The new SUP would be expanded to approximately 30 acres (from its currently permitted 14 acres) and would include the Small Falls and Sugar Pine Trails that extend away from the main camp. About 14.5 acres of the permit area is proposed to be developed for parking, the main camp area, staff camp area, all support facilities and the Sugar Pine and Small Falls Trails. BTC would be designed to operate at a capacity that matches, but does not exceed, the pre-fire overnight staff and camper capacity of 360 individuals. The SUP would be issued for a term period of 30 years and may be renewed upon review and approval by the Forest Service. Figure 3 (map package) illustrates the BTC permit areas. Because of the expanded 30-acre SUP area, a Forest Plan Direction amendment would be completed to accommodate the Camp.

Figure (map package) illustrates the overall Facility Concept and Figure 5 illustrates the Central Camp Facilities Concept Plan.

Table 1 presents a summary of the site features and building facilities that would be constructed within the Camp, including preliminary and approximate sizes of those facilities.

TABLE 1: GENERAL SITE AND FACILITY CONSTRUCTION ACTIVITIES

| Feature                                       | Characteristics                                                                                                                                                                               | Preliminary Quantity / Approximate Size |
|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| <b>Circulation and Infrastructure</b>         |                                                                                                                                                                                               |                                         |
| Hardin Flat Road                              | • Camp gateway signs                                                                                                                                                                          | 3                                       |
|                                               | • Vehicular and pedestrian safety signs                                                                                                                                                       | various                                 |
|                                               | • Crosswalks                                                                                                                                                                                  | 4                                       |
|                                               | • Underground utilities within road right-of-way                                                                                                                                              | 1,100 linear feet                       |
| General drives and parking                    | • Permeable paving or paving with related water quality management features: Entrance turn-around and emergency access route to Dining Hall                                                   | 9,000 square feet                       |
|                                               | • Compacted gravel with concrete wheel stops: all parking areas and entrances<br>• Compacted gravel with surface markings for accessible spaces                                               | 55,000 square feet                      |
|                                               | • Camp entry signs (east lot; north lot / staff camp; main camp)                                                                                                                              | 3                                       |
| Parking                                       | • Total spaces (located either along main entrance, near Staff camp, or opposite Camp north of Hardin Flat Road)                                                                              | 133 spaces                              |
|                                               | • Accessible spaces                                                                                                                                                                           | 7 spaces (3 van accessible)             |
| Accessible routes of travel                   | • Varies from 5 to 8 feet wide; compacted soil (firm and stable) with water quality management (water bars/trench drains and vegetated shoulder areas); wood boardwalks in selected locations | 2,150 linear feet                       |
| Foot paths to family tent camps               | • 4 to 6 feet wide; compacted soil and duff, water bars, and water quality management; wood boardwalks or concrete/stone retaining walls if steep cross-slope; wood stairs on steep grades    | 3,900 linear feet                       |
| Nature Trails                                 | • 3 to 4 feet wide, natural surface                                                                                                                                                           | 1,600 linear feet                       |
| Small Falls Trail                             | • 3 to 4 feet wide, natural surface                                                                                                                                                           | 2,200 linear feet                       |
| Sugar Pines Trail                             | • 3 to 4 feet wide, natural surface                                                                                                                                                           | 1,400 linear feet                       |
| <b>Circulation and Infrastructure (cont.)</b> |                                                                                                                                                                                               |                                         |
| Electrical Supply                             | • Overhead from PG&E to water treatment package plant                                                                                                                                         | 175 linear feet                         |
|                                               | • Overhead from PG&E to restroom in Staff camp                                                                                                                                                | 75 linear feet                          |
|                                               | • Combination of overhead and underground within remainder of camp.                                                                                                                           | 3,450 linear feet                       |
| Water Supply                                  | • In-stream pump, SF Tuolumne River with standpipe and underground line to storage tank                                                                                                       | 1                                       |
|                                               | • Back-up well (existing)                                                                                                                                                                     | 1                                       |
|                                               | • Flocculation tank and water treatment package plant with concrete foundation, wood framing and metal roof structure                                                                         | 1                                       |
|                                               | • Water storage tank(s) with colors to match landscape backdrop                                                                                                                               | 280,000 gallon capacity                 |
|                                               | • Fire pump house                                                                                                                                                                             | 1                                       |
|                                               | • Pneumatic tank with pump                                                                                                                                                                    | 1                                       |
|                                               | • Underground water lines                                                                                                                                                                     | 5,100 linear feet                       |
| Wastewater Treatment                          | • Main camp: buried septic tanks                                                                                                                                                              | 1 (13,000 gallon capacity)              |
|                                               | • Staff camp: buried septic tanks                                                                                                                                                             | 1 (2,000 gallon capacity)               |
|                                               | • Buried wastewater lines within central Camp and Hardin Flat Road                                                                                                                            | 2,820 linear feet                       |

**TABLE 1: GENERAL SITE AND FACILITY CONSTRUCTION ACTIVITIES**

| Feature                                                  | Characteristics                                                                                                                                                                                                                                                                                                          | Preliminary Quantity / Approximate Size                                                                                  |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
|                                                          | <ul style="list-style-type: none"> <li>Lift station in hard-sided wood with metal roof structure</li> </ul>                                                                                                                                                                                                              | 3                                                                                                                        |
|                                                          | <ul style="list-style-type: none"> <li>Leach field</li> </ul>                                                                                                                                                                                                                                                            | 2,000 linear feet (over 60,000 square foot-area)                                                                         |
| Pedestrian / Utility Bridge on South Fork Tuolumne River | <ul style="list-style-type: none"> <li>Shoreline abutments with pier and overlook point; utilities and deck above 100-year floodplain; pedestrian load; movable steps to island</li> </ul>                                                                                                                               | 1 (6 feet x 200 feet)                                                                                                    |
| Pedestrian bridges or wildlife friendly culverts         | <ul style="list-style-type: none"> <li>3 to 6 feet wide; spanning Creek or drainage swales; pedestrian load</li> </ul>                                                                                                                                                                                                   | 5 on Thimbleberry Creek; 5 on drainage swales                                                                            |
| <b>Administrative and Staff Facilities</b>               |                                                                                                                                                                                                                                                                                                                          |                                                                                                                          |
| Staff Cabins                                             | <ul style="list-style-type: none"> <li>Typical staff cabin: concrete piers and wood framing; hard-sided wood with metal roof structure; electricity; sleeps 4 per cabin structure</li> </ul>                                                                                                                             | 13 (350 square feet each)                                                                                                |
|                                                          | <ul style="list-style-type: none"> <li>Accessible staff cabin; concrete piers and wood framing; hard-sided wood with metal roof structure; electricity; sleeps 2 per cabin structure</li> </ul>                                                                                                                          | 2 (200 square feet each)                                                                                                 |
|                                                          | <ul style="list-style-type: none"> <li>One deck per 2 cabins</li> </ul>                                                                                                                                                                                                                                                  | 14 (280 square feet each)                                                                                                |
| Counselor-in-Training Tent Cabins                        | <ul style="list-style-type: none"> <li>Concrete piers and wood framing; deck platform, canvas, and wood shade structure features; sleeps 1 in Coordinator tent cabin, sleeps 8 per tent Counselor-in-Training cabins</li> </ul>                                                                                          | 3 structures (350 square feet total)<br>1 common deck (280 square feet)                                                  |
| Nurse's Tent Cabin and First Aid Station                 | <ul style="list-style-type: none"> <li>First Aid Station: Concrete piers and wood framing; hard-sided wood with metal roof structure for clinic area; electricity; water/restroom; accessible</li> <li>Nurse's Cabin: Concrete piers and wood framing; deck platform and canvas tent; electricity; accessible</li> </ul> | 1 First Aid Station (280 square feet)<br>1 Nurse's Cabin (250 square feet)<br>1 Common connecting deck (100 square feet) |
| Camp Manager's Cabin                                     | <ul style="list-style-type: none"> <li>Year-round residence; concrete foundation; hard-sided wood with metal roof structure; all-weather with propane, water, and electricity; accessible</li> </ul>                                                                                                                     | 1 structure (850 square feet)<br>1 deck (325 square feet)                                                                |
| Maintenance Shop/Storage                                 | <ul style="list-style-type: none"> <li>Concrete foundation; hard-sided wood with metal roof structure; electricity; outdoor fenced storage area</li> </ul>                                                                                                                                                               | 1 structure (1,000 square feet)<br>1 storage area (1,430 square feet)                                                    |
| Office/Store                                             | <ul style="list-style-type: none"> <li>Concrete foundation; hard-sided wood with metal roof structure; electricity</li> </ul>                                                                                                                                                                                            | 1 structure (642 square feet)<br>1 deck (320 square feet)                                                                |
| <b>Camper Facilities</b>                                 |                                                                                                                                                                                                                                                                                                                          |                                                                                                                          |
| Family Tent Cabins                                       | <ul style="list-style-type: none"> <li>Concrete piers and wood framing; deck platform and canvas tent; wood shade structure; 22 with electricity; 5 accessible</li> </ul>                                                                                                                                                | 77 (includes existing tent cabins remaining after the Rim Fire from 425 to 625 square feet including decks)              |
| Dining Hall and Kitchen                                  | <ul style="list-style-type: none"> <li>1-story structure (group dining area, commercial kitchen, and storage); concrete foundation; wood and metal framing; hard-sided wood, metal, and metal roof structure; stone fireplace; restroom</li> </ul>                                                                       | 1 structure (9,000 square feet)<br>1 deck (770 square feet)                                                              |
| Recycling Center                                         | <ul style="list-style-type: none"> <li>Concrete with stone or wood fascia; metal framing</li> </ul>                                                                                                                                                                                                                      | 1 structure (535 square feet)                                                                                            |
| Recreation Hall / Arts and Crafts                        | <ul style="list-style-type: none"> <li>Multi-use recreation and social gathering room; storage; concrete foundation; wood and metal framing; hard-sided wood, metal, stone, and metal roof structure; restroom</li> </ul>                                                                                                | 1 structure (2,760 square feet)<br>1 deck (1,700 square feet)                                                            |
| Camp Restrooms                                           | <ul style="list-style-type: none"> <li>Concrete floors; hard-sided wood or concrete with stone, and metal roof structure; electricity; hot and cold water; maintenance closet</li> </ul>                                                                                                                                 | 3 structures (545 square feet)<br>note: 1 existing in to remain                                                          |
| Camp Accessible Restroom                                 | <ul style="list-style-type: none"> <li>Concrete floors; hard-sided wood or concrete with stone, and metal roof structure; electricity; hot and cold water; maintenance closet</li> </ul>                                                                                                                                 | 1 structure (300 square feet)                                                                                            |

TABLE 1: GENERAL SITE AND FACILITY CONSTRUCTION ACTIVITIES

| Feature                                                               | Characteristics                                                                                                                                                                                                                                       | Preliminary Quantity / Approximate Size                              |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| Camp Showers                                                          | <ul style="list-style-type: none"> <li>Concrete floors; concrete/stone wall enclosures; hot and cold water; maintenance closet; open-air ceiling</li> </ul>                                                                                           | 3 structures (318 square feet each)<br>note: 1 existing in to remain |
| Camp Laundries                                                        | <ul style="list-style-type: none"> <li>Concrete floors; hard-sided wood and metal roof structure; electricity; hot and cold water; maintenance closet</li> </ul>                                                                                      | 3 structures (164 square feet each)                                  |
| Staff Camp combined restrooms/showers/laundry                         | <ul style="list-style-type: none"> <li>Concrete floors; hard-sided wood and metal roof structure; electricity; hot and cold water; maintenance closet</li> </ul>                                                                                      | 1 (1,226 square feet each)                                           |
| <b>Social, Recreation, and Education Structures/Use Areas</b>         |                                                                                                                                                                                                                                                       |                                                                      |
| Weirs (existing)                                                      | <ul style="list-style-type: none"> <li>Retrofit existing concrete foundation and wood weir slats as needed</li> </ul>                                                                                                                                 | 2                                                                    |
| Swimming area retaining walls                                         | <ul style="list-style-type: none"> <li>Reinforced concrete with stone fascia</li> </ul>                                                                                                                                                               | 4 walls (total 275 linear feet)                                      |
| Chair circle                                                          | <ul style="list-style-type: none"> <li>Wood or canvas shade arbors; compacted native soil and duff with erosion control and water quality management</li> </ul>                                                                                       | 1                                                                    |
| Nature Center                                                         | <ul style="list-style-type: none"> <li>Wood framing on concrete slab; hard-sided wood and metal roof structure; outdoor deck overlooking river</li> </ul>                                                                                             | 1 structure (700 square feet)<br>1 deck (200 square feet)            |
| Stage and Amphitheater                                                | <ul style="list-style-type: none"> <li>Stage with steel and wood framing, water, electricity; amphitheater with concrete and wood seating</li> <li>Lighting booth on concrete piers, hard-sided, wood framing, metal roof, and electricity</li> </ul> | 1 (3,200 square feet total)                                          |
| Kiddie Camp                                                           | <ul style="list-style-type: none"> <li>Fenced area; contained sand; 2 storage sheds; deck; shade structures</li> </ul>                                                                                                                                | 1 area (2,100 square feet including 1,000 square-foot day use deck)  |
| Children's Discovery Area                                             | <ul style="list-style-type: none"> <li>Open use area; discovery features; contained sand</li> </ul>                                                                                                                                                   | 1 (1,000 square feet)                                                |
| Sports Courts                                                         | <ul style="list-style-type: none"> <li>Permeable paving or paving with related water quality management features; spectator seating</li> </ul>                                                                                                        | 3 (3,600 square feet total)                                          |
| Common use decks                                                      | <ul style="list-style-type: none"> <li>Wood framing; decking and shade structure</li> </ul>                                                                                                                                                           | 4 (max. 900 square feet each)                                        |
| Sauna                                                                 | <ul style="list-style-type: none"> <li>Hard-sided stone and metal roof structure</li> </ul>                                                                                                                                                           | 1 (224 square feet)                                                  |
| <b>Social, Recreation, and Education Structures/Use Areas (cont.)</b> |                                                                                                                                                                                                                                                       |                                                                      |
| Kiddie Beach                                                          | <ul style="list-style-type: none"> <li>Concrete/stone retaining walls (above); contained granite fines</li> </ul>                                                                                                                                     | 1 use area (2,250 square feet)                                       |
| Adult Beach                                                           | <ul style="list-style-type: none"> <li>Concrete/stone retaining walls (above); contained granite fines; level concrete deck areas</li> </ul>                                                                                                          | 1 use area (1,350 square feet)                                       |
| Archery Range                                                         | <ul style="list-style-type: none"> <li>Shade/arbor structure waiting area: shooting line and targets</li> </ul>                                                                                                                                       | 1 structure (720 square feet)<br>1 use area (9000 square feet)       |
| Miscellaneous storage sheds                                           | <ul style="list-style-type: none"> <li>Wood frame decks or concrete foundations; wood framing and siding; metal roof</li> </ul>                                                                                                                       | 6 (120 square feet each)                                             |
| <b>Future Facilities (date not determined within Permit period)</b>   |                                                                                                                                                                                                                                                       |                                                                      |
| Outdoor recreation / challenge features in Permit Area                | <ul style="list-style-type: none"> <li>Ropes course; disk golf course; temporary horse corral (at archery range); geocaching course; location within permit area to be determined</li> </ul>                                                          | To be determined                                                     |
| <b>Other Site Activities</b>                                          |                                                                                                                                                                                                                                                       |                                                                      |
| Grading and erosion control                                           | <ul style="list-style-type: none"> <li>General contouring and fine grading for parking areas, drainage control, and stream restoration; BMPs for erosion control</li> </ul>                                                                           | 4-5 acres                                                            |

**TABLE 1: GENERAL SITE AND FACILITY CONSTRUCTION ACTIVITIES**

| Feature                                                  | Characteristics                                                                                                                                                                                             | Preliminary Quantity / Approximate Size |
|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| Revegetation and erosion control (Map Package; Figure 6) | <ul style="list-style-type: none"> <li>Erosion control mulching; liner and container planting; plant protection and hand weeding; temporary irrigation or hand watering for establishment period</li> </ul> | 6 acres                                 |

Future facilities identified above (ropes course; disk golf course; temporary horse corral at archery range; geocaching course) would not be part of the initial BTC reconstruction. These facilities involve minimal improvements and/or the multiple use of developed spaces described elsewhere in the site construction activities. The future uses identified are consistent with the Camp's Developed Recreation Site designation in the Forest Plan. Any future facility improvements will be subject to a separate CEQA review process as deemed necessary.

### *Camp Revegetation*

The immediate BTC permit area burned to differing degrees in the Rim Fire. The most severely burned was the core of the BTC where the majority of group use facilities existed and where hazard tree removal has left the area treeless. In other burned areas hazard tree removals continue and some trees remain alive but may not survive over time and may need to be removed. Some areas generally did not burn and their forest canopy remains somewhat intact.

Consistent with overall Forest Plan goals and the riparian setting of the central BTC on the north-facing slope of the South Fork Tuolumne River, revegetation will emphasize dense riparian vegetation and conifers shading the river, Thimbleberry Creek, and related drainages. High to moderate stand densities and canopy cover will be targeted for mid-slope areas of the BTC. Within that framework, along the Hardin Flat Road corridor, revegetation will accomplish dual goals of a shaded fuel break and screening of BTC facilities and parking areas. The south-facing leach field area, that was entirely burned, will be managed into an open hillside meadow. The remaining south-facing areas will be managed as an open forest.

Those portions of the Permit Area that did not burn or were only partially burned, such as around the staff camp area and the downstream portions of the central BTC will be managed consistent with safety and the above goals. A general goal for all areas of BTC is to prevent new infestations of noxious weeds and the spread of existing weeds as the result of project activities. Within the BTC area, weed-free mulch, mechanical, and hand methods will be used to remove and discourage noxious weeds.

Figure 6 (map package) presents a conceptual area mosaic of revegetation of burned areas within the central BTC and the broad objectives for each mosaic unit. Table 2 provides a general listing of species keyed to that mosaic.

All plants used in revegetation will be native to the immediate region surrounding the BTC. It is anticipated that the majority of planting will be conducted in the fall using small contract-grown container plants (liners) although in select locations more mature trees may be transplanted or planted from larger



containers. All revegetation will be consistent with Forest Service goals and objectives for revegetation (FHS 2609.2).

**TABLE 2: GENERALIZED SPECIES LIST FOR REVEGETATION**

| Botanical Name                     | Common Name          | Planting Zone (Figure 6) |     |     |     |     |     |     |     |     |
|------------------------------------|----------------------|--------------------------|-----|-----|-----|-----|-----|-----|-----|-----|
|                                    |                      | 1                        | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   |
| <b>Trees</b>                       |                      |                          |     |     |     |     |     |     |     |     |
| <i>Acer macrophyllum</i>           | Big Leaf Maple       | Yes                      | Yes | Yes |     |     |     |     |     |     |
| <i>Alnus rhombifolia</i>           | White Alder          | Yes                      | Yes | Yes |     |     |     |     |     |     |
| <i>Calocedrus decurrens</i>        | Incense Cedar        |                          |     |     | Yes |     |     | Yes |     | Yes |
| <i>Cornus nuttallii</i>            | Western Dogwood      |                          | Yes | Yes | Yes | Yes | Yes |     |     |     |
| <i>Corylus cornuta californica</i> | Hazelnut             |                          |     | Yes | Yes |     |     |     |     |     |
| <i>Pinus lambertiana</i>           | Sugar Pine           |                          |     |     |     |     |     |     |     | Yes |
| <i>Pinus ponderosa</i>             | Ponderosa Pine       |                          |     |     |     |     | Yes |     |     | Yes |
| <i>Pseudotsuga menziesii</i>       | Douglas Fir          |                          |     |     |     | Yes | Yes | Yes |     | Yes |
| <i>Quercus kelloggii</i>           | Black Oak            |                          |     |     |     | Yes | Yes | Yes |     | Yes |
| <i>Salix spp.</i>                  | Willow               | Yes                      | Yes | Yes | Yes |     |     |     |     |     |
| <i>Sequoiadendron giganteum</i>    | Giant Sequoia        |                          |     |     |     | Yes | Yes | Yes |     |     |
| <b>Shrubs and Ground Covers</b>    |                      |                          |     |     |     |     |     |     |     |     |
| <i>Arctostaphylos spp.</i>         | Manzanita            |                          |     |     |     |     |     | Yes |     |     |
| <i>Amelanchier alnifolia</i>       | Western Serviceberry |                          |     |     |     |     | Yes |     |     | Yes |
| <i>Chamaebatia foliolosa</i>       | Mountain Misery      |                          |     |     |     | Yes | Yes | Yes |     | Yes |
| <i>Heteromeles arbutifolia</i>     | Toyon                |                          |     |     |     | Yes | Yes | Yes | Yes | Yes |
| <i>Lilium pardalinum</i>           | Leopard Lily         |                          | Yes | Yes |     |     |     |     |     |     |
| <i>Philadelphus lewisii</i>        | Mock Orange          |                          | Yes | Yes | Yes |     |     |     |     |     |
| <i>Rubus parviflorus</i>           | Thimbleberry         |                          |     | Yes | Yes |     |     |     |     |     |

### ***Project Operations***

BTC would be in operation, as defined in the Special Use Permit with USFS, generally between April and November inclusive of Camp set-up and take-down. BTC is closed in the winter months.

### ***Project Construction Activities and Schedule***

Project implementation would begin in the early 2020 with initial construction to rebuild the majority of the Camp infrastructure and facilities. Overall construction of initial facilities is anticipated to last for approximately two years. Minor construction and/or facility renovation activities may occur throughout the remainder of the permit period. The Project does not include reconstruction of the Hardin Flat Road Bridge across the South Fork Tuolumne River, which is being undertaken by Tuolumne County.

Table 3 presents anticipated construction activities and specialized construction equipment beyond that needed for delivery of materials to the site and for the transportation of construction workers.

**TABLE 3: ANTICIPATED CONSTRUCTION ACTIVITIES AND EQUIPMENT**

| Construction Activities                            | Equipment         | Number/Days | Hours/Days | Days |
|----------------------------------------------------|-------------------|-------------|------------|------|
| Demolition / Grading                               | Tracked excavator | 1           | 8          | 180  |
|                                                    | Backhoe loader    | 1           |            | 180  |
|                                                    | Dozer             | 1           |            | 180  |
|                                                    | Grader            | 1           |            | 180  |
| Paving                                             | Dump Trucks       | 2           | 8          | 40   |
|                                                    | Paver             | 1           |            | 20   |
|                                                    | Compactor         | 1           |            | 20   |
| Electrical Supply                                  | Trencher          | 1           | 8          | 48   |
|                                                    | Backhoe loader    | 1           |            | 48   |
| Water Supply                                       | Excavator         | 1           | 8          | 60   |
|                                                    | Trencher          | 1           |            | 60   |
|                                                    | Cement mixer      | 5           |            | 15   |
|                                                    | Concrete pump     | 1           |            | 15   |
| Wastewater Treatment                               | Excavator         | 1           | 8          | 30   |
|                                                    | Trencher          | 1           |            | 90   |
|                                                    | Backhoe loader    | 1           |            | 90   |
|                                                    | Dozer             | 1           |            | 32   |
| Utility and Pedestrian Bridge                      | Pile-driver       | 1           | 8          | 30   |
|                                                    | Excavator         | 1           |            | 30   |
|                                                    | Backhoe loader    | 2           |            | 60   |
|                                                    | Cement mixer      | 5           |            | 10   |
|                                                    | Concrete pump     | 1           |            | 10   |
|                                                    | Telescoping crane | 1           |            | 75   |
|                                                    | Forklift          | 1           |            | 75   |
| Administrative and Staff Facilities                | Excavator         | 1           | 8          | 180  |
|                                                    | Backhoe loader    | 1           |            | 240  |
|                                                    | Cement mixer      | 1           |            | 60   |
|                                                    | Concrete pump     | 1           |            | 60   |
|                                                    | Forklift          |             |            | 240  |
| Camper Facilities                                  | Excavator         | 1           | 8          | 180  |
|                                                    | Backhoe loader    | 1           |            | 240  |
|                                                    | Cement mixer      | 1           |            | 60   |
|                                                    | Concrete pump     | 1           |            | 60   |
|                                                    | Forklift          |             |            | 240  |
| Social, Recreation, Education Structures/Use Areas | Excavator         | 1           | 8          | 180  |
|                                                    | Backhoe loader    | 1           |            | 240  |
|                                                    | Cement mixer      | 1           |            | 60   |
|                                                    | Concrete pump     | 1           |            | 60   |
|                                                    | Forklift          | 1           |            | 24   |

Source: 2M Associates; City of Berkeley

***Project Approvals***

The following permits and approvals will be obtained prior to the commencement of any ground disturbing activities and to assure detail design and construction plans incorporate all mitigation requirements:

1. **US Army Corps of Engineers (COE):** Application, plans, and specifications for issuance of a Nationwide permit under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.
2. **Central Valley Regional Water Quality Control Board (RWQCB):** Application, plans, and specifications for Water Quality Certification and coverage under the National Pollutant Discharge Elimination System (NPDES) construction general permit for storm water discharge under Section 401(A)(1) of the Clean Water Act and the Porter-Cologne Water Quality Control Act of 1975.
3. **California Water Quality Control Board, Division of Drinking Water:** Application, plans, and specifications for permit for surface water appropriation and treatment of drinking water under the Porter-Cologne Water Quality Control Act of 1975 and Safe Drinking Water Act (Pub. L. 93-523).
4. **California Department of Fish and Wildlife (CDFW):** Application, plans, and specifications for work to obtain a Stream Alteration Agreement pursuant to Fish and Game Code sections 1600 *et seq.*
5. **California Department of Toxic Substances Control (DTSC):** Approval and oversight of hazardous material remediation if required.
6. **Pacific Gas & Electric Company:** Review and approval of site plans and construction documents for any work within a 20-foot easement.
7. **Tuolumne County:**
  - a. Application, plans, and specifications to obtain an encroachment permit for any work within Tuolumne County's Hardin Flat Road right-of-way.
  - b. Floodplain encroachment review by the County floodplain Administrator and Floodplain Development Permit pursuant to Tuolumne County Code Section 5.24.145.
  - c. Percolation tests and soil profiles, system design plans and specifications (plot plan, grading plan, description of groundwater and soils, description of monitoring devices, system operation and function), and site evaluation and testing necessary to obtain Certification of an on-site sewage treatment and disposal system pursuant to Tuolumne County Code Section 13.08.270A.
  - d. Application, plans, and specifications for food concession Certification.
  - e. Application, plans, and specifications to obtain a demolition permit.
  - f. Application, plans, and specifications to obtain a grading permit.
  - g. Application, plans, and specifications to obtain building permits.
  - h. Permits under California Fire Code as adopted by Tuolumne County, Fires Safe Standards, and Fire Safe Permit review.
8. **Forest Service:**
  - a. All construction documents and specifications for Camp reconstruction will be submitted by the City of Berkeley to the Forest Service for review, comment, and approval of selected features prior to the commencement of any ground-disturbing activities. Forest Service approval of construction documents will be required for the pedestrian and utility bridges.

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## References

- City of Berkeley. 2020 *Vision*. [https://www.cityofberkeley.info/.../2020/2020\\_vision\\_web.pdf](https://www.cityofberkeley.info/.../2020/2020_vision_web.pdf).
- City of Berkeley. 2015. *City of Berkeley Tuolumne Camp Permit 46690 Built Environment Image Guidelines Administrative Review Draft*. Prepared by 2M Associates. July 2015.
- USDA, Forest Service, FS-710. *The Built Environment Image Guide for National Forests and Grasslands*. September, 2001.
- Stanislaus National Forest Groveland Ranger District Tuolumne County, California. *City of Berkeley Tuolumne Camp Permit (46690) Scoping Package*. October 21, 2015) <http://www.fs.usda.gov/project/?project=46690>.
- USDA, Forest Service, FS-710. *The Built Environment Image Guide for National Forests and Grasslands*. September, 2001.
- United States Department of Agriculture, Stanislaus National Forest. 2017. *Forest Plan Direction - Stanislaus National Forest, Sonora, CA*.
- USDA, Forest Service, Stanislaus National Forest. 1991. *Stanislaus National Forest Land Resource Management Plan*. October 28, 1991.

**4.0 ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

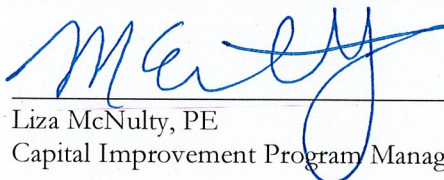
The environmental factors checked below would be potentially affected by the project, involving at least one impact that is a potentially significant impact as indicated by the checklist on the following pages.

- Aesthetics
- Biological Resources
- Greenhouse Gas Emissions
- Land Use/Planning
- Population/Housing
- Transportation/Circulation
- Mandatory Findings of Significance
- Agricultural/Forestry Resources
- Cultural Resources
- Hazards/Hazardous Materials
- Mineral Resources
- Public Services
- Tribal Cultural Resources
- Air Quality
- Geology and Soils
- Hydrology/Water Quality
- Noise
- Recreation
- Utilities/Service Systems

**5.0 DETERMINATION:**

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required
- I find that the proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

  
 \_\_\_\_\_  
 Liza McNulty, PE  
 Capital Improvement Program Manager

8-30-2018  
 \_\_\_\_\_  
 Date

## 6.0 EVALUATION OF ENVIRONMENTAL IMPACTS

A brief explanation is required for all answers except “No Impact” answers if these answers are adequately supported by the information sources listed in the References section for each environmental issue. The Environmental Issues presented in Section 7.0 identify all of the Environmental Factors listed in the CEQA Appendix G Environmental Checklist Form.

## 7.0 ENVIRONMENTAL ISSUES

|                                                                                                                                                          | <u>Potentially<br/>Significant<br/>Impact</u> | <u>Potentially<br/>Significant<br/>Unless<br/>Mitigation<br/>Incorporated</u> | <u>Less Than<br/>Significant<br/>Impact</u> | <u>No<br/>Impact</u>                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------------|---------------------------------------------|-------------------------------------|
| <b>1. AESTHETICS.</b> Would the project:                                                                                                                 |                                               |                                                                               |                                             |                                     |
| a) Have a substantial adverse effect on a scenic vista?                                                                                                  | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| c) Substantially degrade the existing visual character or quality of the site and its surroundings?                                                      | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |
| d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?                                   | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |

### Environmental Setting

The majority of BTC structures were destroyed due to the Rim Fire and most of the vegetation growing within the central camp area was lost. While vegetation is re-establishing itself at BTC since the Rim Fire, the Camp appears as a burned out area with unsightly remains of structures and barren terrain.

BTC is located about eight miles from the northern entrance to Yosemite National Park which is accessed via Hardin Flat Road off of State Highway 120. The segment of State Highway 120 within the vicinity of BTC is not a designated State Scenic Highway (Caltrans)<sup>1</sup>.

### Impact Discussion

With mitigation, the Project will not adversely affect any scenic views or vistas, damage scenic resources or introduce new light or glare sources. The Project would improve the visual appearance of the existing BTC site. A brief discussion of each environmental issue included under Section 1 is presented below.

#### a) Would the project have a substantial adverse effect on a scenic vista?

There are no designated Federal, State, or local scenic vistas in the region that include views to the BTC site.

<sup>1</sup> The segment of Highway 120 within Yosemite National Park is designated as a connecting freeway and National Scenic Byway.

**b) Would the project substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within a scenic highway?**

There are no designated State Scenic Highways in Tuolumne County. Highways 49 and 108 are eligible State Scenic Highways, neither of which are within view of BTC.

The Tuolumne County General Plan Conservation and Open Space Element identifies Scenic Highway routes. The closest designated County Scenic Highway Route is Highway 49, approximately 30 miles west of BTC. Views from the route do not include BTC.

State Highway 120 east of BTC is a designated National Scenic Byway beginning at the Big Oak Flat Yosemite National Park entrance, approximately eight miles away from the BTC site, and ends at Tioga Pass. Views from the route do not include BTC.

The Stanislaus National Forest Management Area Allocations include State Highway 120 from the Forest boundary near Groveland to the entrance of Yosemite National Park as a Scenic Corridor (USDA 2017, p. 149). The BTC SUP area is within the general delineation of the Scenic Corridor. The proposed water tank location with a forest hillside backdrop is visible from Highway 120 for motorists traveling east or stopping at an unmarked highway pulloff. The Scenic Corridor includes Hardin Flat Road where the BTC SUP area is visible in foreground views.

There are no historic structures at BTC (see Section 5 Cultural Resources). Existing trees, unless deemed hazard trees, will be retained. Rock outcrops will be preserved. The most significant scenic resource of the area is the South Fork Tuolumne River with significant boulders and white-water conditions. Existing flashboard weirs will be maintained and used for traditional summer ponding and recreation use. The ponding visually enhances the variety of water conditions in the river.

**c) Would the project substantially degrade the existing visual character or quality of the site and its surroundings?**

The Stanislaus National Forest's *Forest Plan Direction 2017* establishes general objectives for the management of visual character. These include a Visual Quality Objective (VQO) of Partial Retention for designated Developed Recreation Areas such as BTC. A Partial Retention VQO (USDA, 1979, AHN 701) is one where the landscape would appear slightly altered with management activities remaining visually subordinate to the characteristic landscape. However, the *Forest Plan Direction* indicates that a VQO of Modification is acceptable for developed recreation sites. With a modification VQO the landscape appears moderately altered where management activities may visually dominate the original characteristic landscape. Vegetation and landform alteration must appear as natural occurrences. Roads and structures would ultimately remain visually subordinate.

The effects of the Rim Fire on the visibility of the BTC SUP area present a visually disturbed characteristic landscape in the immediate foreground of Hardin Flat Road with the presence of remnant BTC facilities openly visible. Given the effects of the Rim Fire on the visibility of the BTC SUP area as seen from Hardin Flat Road, existing conditions do not meet VQO objectives. New development would

also be openly visible and, depending on the design and choice of materials, significantly contrast with the characteristic landscape resulting in a low to moderate level of scenic integrity.

Related to VQOs, Forest Service Management Standards and Guidelines for the BTC SUP area include Recreation Opportunity Spectrum (ROS) Class of Roaded Natural for Scenic Corridors (USDA 2017, p. 150). Forest Service guidelines for a Roaded Natural ROS designation (USDA, 1979, PNW 98) typically involve resource modifications and utilization practices that are visually evident but are harmonious with the surrounding characteristic landscape environment. These involve:

- A rustic design usually based on use of native materials.
- Synthetic materials should not be evident.
- Moderate site modifications.

A higher degree of visible development would be either “Inconsistent” or “Unacceptable” for Roaded Natural ROS.

Without specific material controls for structures and screening measures, the character of the BTC development would not meet VQO Objectives in the short or long term. This is considered a potentially significant impact.

Key actions that will positively impact the scenic integrity of the SUP area and result in meeting VQO Objectives include:

- The application of guidelines to Camp structures and facilities contained in the *Design Narrative / Built Environmental Image Guidelines* (project file) developed pursuant to policies contained in FSM 2300, Recreation, Wilderness, and Related Resource Management for Privately Provided Recreation Facilities (2014) would direct structure’s character (bulk, line, plane, form, color, texture) to create a rustic, unified scenic integrity. These guidelines were specifically developed to be applied to Camp in order to reflect a ROS designation of Roaded Natural and attain a VQO of Partial Retention as seen from Hardin Flat Road. The guidelines outline design elements and materials to be used in the Project that will create a camp with a rustic, unified appearance with respect to the context of the surrounding natural systems, and in particular the scenic integrity of the South Fork Tuolumne River corridor.
- The design and implementation of a revegetation / reforestation program in previously burned areas (**Figure 6** of the map package) is consistent with Forest Service guidelines (FSH 2509.22, 12.51 Exhibit 04, BMP 5.4 - Revegetation of Surface-disturbed Areas). Revegetation would emphasize dense riparian plantings and conifers shading the South Fork Tuolumne River, Thimbleberry Creek, and related drainages. Along the Hardin Flat Road corridor revegetation will emphasize the creation of a shaded fuel break and screening of BTC facilities and parking areas. Within approximately 10 years of the 30-year time frame of the SUP, it is anticipated that most of the BTC facilities will be screened from direct view as seen from Hardin Flat Road consistent with a Roaded Natural ROS designation and a Retention VQO.

With implementation of Mitigation Measures AES 1 and AES 2, potential impacts to the scenic integrity of the BTC SUP area would be less than significant.



**d) Would the project create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?**

Because of lack of screening vegetation caused by the Rim Fire, much of the Camp will be directly visible from Hardin Flat Road and from within many areas of the Camp.

Prior to the Rim fire, outside shielded and unshielded wall lighting was provided on selected common use facilities (Office, Dining Hall, Recreation Hall, First Aid Station, etc.). Unshielded, cobra-type overhead area lighting existed at the main sports courts. Installing this type of lighting with the proposed Project could create light and glare along Hardin Flat Road which is a potentially significant impact. However, with implementation of Mitigation Measure AES 3 and AES 4, potential light and glare impacts would be less than significant.

The type of wall and roofing materials, and glass used in structures has the potential to create daytime glare attracting the attention of motorists along Hardin Flat Road and contrasting with the natural setting inconsistent with the Visual Quality Objectives designated for the Camp. With implementation of Mitigation Measure AES 4, potential glare impacts would be less than significant.

### **Mitigation Measures**

- AES-1** In order to meet a near-term Visual Quality Objective of Modification the BTC Facilities shall be designed to follow the *Design Narrative / Built Environmental Image Guidelines* (2M Associates 2017) for the project. Design documents (90 percent completion) will be submitted to the Forest Service for review and comment for consistency with the guidelines.
- AES-2** In order to screen project facilities and meet a Visual Quality Objective of Partial Retention a revegetation plan for the Hardin Flat road corridor, burned areas, and areas disturbed by construction will be prepared and implemented emphasizing:
- Feathered screening between Hardin Flat Road and BTC facilities.
  - Dense riparian vegetation and conifers shading of the river, Thimbleberry Creek, and related drainages.
- Planting program design documents (90 percent completion) will be submitted to the Forest Service for review and comment for consistency Forest Service standards.
- AES-3** To minimize visibility and to reduce the potential impacts of lighting as seen from Hardin Flat Road:
- All outdoor lighting shall be dark sky-compliant and consistent with California Green Building Standards Code Section 5.106.8 Light Pollution Reduction
  - All light fixtures shall include shrouds (either fixed or adjustable), other shielding, or be directed in such a way as to block direct light as seen from Hardin Flat Road.
  - Lighting that is not required during nighttime hours shall be controlled by the use of timed switches and/or motion detector activation controls so lights are only on when necessary.
- AES-4** To minimize visibility and to reduce the potential impacts of glare as seen from Hardin Flat Road:

- Structures, including roofs, shall use non-reflective, earth-toned materials that match the soil and vegetation colors of the backdrop characteristic landscape.
- All structure windows and doors shall use non-reflective glass.

## References

2M Associates. 2017. City of Berkeley Tuolumne Camp Permit (46690) - Design Narrative / Built Environmental Image Guidelines.

Caltrans. *California Scenic Mapping System*. Available on the Caltrans website at: [www.dot.ca.gov/hq/LandArch/16\\_liveability/Scenic\\_highways/](http://www.dot.ca.gov/hq/LandArch/16_liveability/Scenic_highways/).

United States Department of Agriculture, Stanislaus National Forest. 2017. Forest Plan Direction - Stanislaus National Forest, Sonora, CA.

United States Department of Agriculture, Forest Service. December, 1979. Landscape Aesthetics - A Handbook for Scenery Management. Agricultural Handbook Number 701.

United States Department of Agriculture, Forest Service. December, 1979. The Recreation Opportunity Spectrum: A Framework for Planning, Management, and Research. General technical report PNW 98. [https://www.fs.fed.us/cdt/carrying\\_capacity/rosfieldguide/ros\\_primer\\_and\\_field\\_guide.htm](https://www.fs.fed.us/cdt/carrying_capacity/rosfieldguide/ros_primer_and_field_guide.htm)

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <u>Potentially Significant Impact</u> | <u>Potentially Significant Unless Mitigation Incorporated</u> | <u>Less Than Significant Impact</u> | <u>No Impact</u>                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------------------------------------|-------------------------------------|-------------------------------------|
| <b>2. AGRICULTURE AND FORESTRY RESOURCES.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                       |                                                               |                                     |                                     |
| In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest protocols adopted by the California Air Resources Board. Would the project: |                                       |                                                               |                                     |                                     |
| a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <input type="checkbox"/>              | <input type="checkbox"/>                                      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <input type="checkbox"/>              | <input type="checkbox"/>                                      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <input type="checkbox"/>              | <input type="checkbox"/>                                      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

|                                                                                                                                                                                                              | <u>Potentially Significant Impact</u> | <u>Potentially Significant Unless Mitigation Incorporated</u> | <u>Less Than Significant Impact</u> | <u>No Impact</u>         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------------------------------------|-------------------------------------|--------------------------|
| <b>2. AGRICULTURE AND FORESTRY RESOURCES (cont.)</b>                                                                                                                                                         |                                       |                                                               |                                     |                          |
| d) Result in the loss of forest land or conversion of forest land to non-forest use?                                                                                                                         | <input type="checkbox"/>              | <input type="checkbox"/>                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland, to non-agricultural use or conversion of forest land to non-forest use? | <input type="checkbox"/>              | <input type="checkbox"/>                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

**Environmental Setting**

The Rim Fire resulted in a vast amount of forest vegetation loss with high vegetation burn severity on 43 percent of the Rim Fire area and the remaining 57 percent burned at a mixed severity. Where the fire burned with high intensity nearly all woody materials, litter and duff located on the ground were fully burned. In some stands, fire did not burn through the tree canopy, but heat from the fire killed most or all of the needles of the canopy. The Forest Service initiated a hazard tree abatement program to remove dead and dying trees for safety reasons and to reduce the amount of available fuels (USDA 2014a; USDA 2014b).

BTC experienced extensive devastation due to the Rim Fire. Only 19 of the 128 Camp structures survived the fire. Most of the infrastructure was damaged or destroyed. Additionally, the forest canopy that once existed over much of the central camp area was destroyed and will take 20 years or more to provide the natural shading it once did. In other burned areas of the BTC permit area, some trees remain alive but may not survive over time and may need to be removed. In areas within the BTC permit area that generally did not burn, the forest canopy remains somewhat intact. The BTC permit area is under the jurisdiction of USFS and is subject to the guidelines and requirements of the *Forest Plan Direction* (USDA 2017).

## Impact Discussion

There would be less than significant impacts to forest resources due to the proposed Project and no impacts to agricultural resources. A brief discussion of each environmental issue included under Section 2 is presented below.

**a) Would the project convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps and prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?**

The proposed BTC permit area is designated Public under the Tuolumne County General Plan (County of Tuolumne 1996) and Public under the Tuolumne County Ordinance Code (County of Tuolumne). The “Public” designation is assigned to lands owned by public agencies, such as USFS, and exempt from Tuolumne County land use regulations. The BTC permit area is within the SNF and contains no farmlands.

**b) Would the project conflict with existing zoning for agricultural use, or a Williamson Act contract?**

As discussed under Subsection 2a above, the BTC permit area is located within SNF and is zoned Public. The Project site is not under a Williamson Act contract. The lands surrounding the BTC permit area are within SNF and zoned Public. There would be no conflict with any agricultural lands.

**c) Would the project conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?**

As discussed under **Subsection 2a** and **2b** above, the proposed BTC permit area is located in SNF and under the jurisdiction of the federal government. The proposed Project would obtain a 30-year Special Use Permit from USFS for the reconstruction of BTC. The proposed Project would not conflict with the Public zoning for SNF.

**d) Would the project result in the loss of forest land or conversion of forest land to non-forest use?**

The BTC permit area is located in SNF. The proposed Project will not result in the loss of forest land nor its conversion to non-forest use. The proposed Project is consistent with the FSH and FSM and will not convert any forest land located within the BTC permit area to non-forest use.

- e) **Would the project involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland, to non-agricultural use or conversion of forest land to non-forest use?**

The Project will not result in conversion of any farmland to non-agricultural use or forest land to non-forest use. Refer to Subsections 2a - 2d above.

**Mitigation Measures**

None required.

**References**

County of Tuolumne. 1996. *Tuolumne County General Plan, Chapter 01 – Land Use*. Available on the County website at: <https://www.tuolumnecounty.ca.gov/185/General-Plan-Policy>.

County of Tuolumne. *Tuolumne County Ordinance Code, Title 17 Zoning*. Available on the County website at: <https://www.tuolumnecounty.ca.gov/165/Tuolumne-County-Ordinance-Code>.

USDA. 2017. Forest Plan Direction - Stanislaus National Forest, Sonora, CA.

USDA 2014a. Rim Fire Hazard Trees Environmental Assessment. April 2014. USDA Forest Service, Stanislaus National Forest, Sonora, CA. 93 pp.

USDA 2014b. Rim Fire Hazard Trees Decision Notice and Finding of No Significant Impact. April 25, 2014. Stanislaus National Forest, Sonora, CA. 5 pp.

|                                                                                                                                                                                                                                                                                              | <u>Potentially Significant Impact</u> | <u>Potentially Significant Unless Mitigation Incorporated</u> | <u>Less Than Significant Impact</u> | <u>No Impact</u>         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------------------------------------|-------------------------------------|--------------------------|
| <b>3. AIR QUALITY.</b> Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:                                                         |                                       |                                                               |                                     |                          |
| a) Conflict with or obstruct implementation of the applicable air quality plan?                                                                                                                                                                                                              | <input type="checkbox"/>              | <input type="checkbox"/>                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?                                                                                                                                                                           | <input type="checkbox"/>              | <input checked="" type="checkbox"/>                           | <input type="checkbox"/>            | <input type="checkbox"/> |
| c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)? | <input type="checkbox"/>              | <input type="checkbox"/>                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d) Expose sensitive receptors to substantial pollutant concentrations?                                                                                                                                                                                                                       | <input type="checkbox"/>              | <input type="checkbox"/>                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| e) Create objectionable odors affecting a substantial number of people?                                                                                                                                                                                                                      | <input type="checkbox"/>              | <input type="checkbox"/>                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

## Environmental Setting

The BTC Project site straddles the South Fork Tuolumne River about 15 miles east of Groveland in southern Tuolumne County, which is part of California's Mountain Counties Air Basin (MCAB) (California Air Resources Board, Air Basins). Air quality in the western reaches of the MCAB is affected by its proximity to California's San Joaquin Valley (SJV). The air pollution potential of the SJV is very high because its surrounding mountains, light winds and high summer temperatures are ideal for trapping air pollutants emitted from local sources (i.e., many industrial, commercial, and agricultural sources of diverse types and sizes, and from all its on-road motor vehicles, trains and aircraft). Frequent high summer ozone levels result from the photochemical reaction of nitrogen oxides (NO<sub>x</sub>) and reactive organic gases (ROG) emitted from sources within the SJV. Winter time atmospheric temperature inversions (i.e., colder air nearer the ground rather than farther aloft, which is contrary to the more usual pattern) occur often in the SJV and in foothill areas of the MCAB. Such inversions trap emissions of small-diameter particulate matter, which are of particular concern because of the adverse health impacts associated with their high ambient levels.

The California Air Resources Board (CARB) and the Tuolumne County Air Pollution Control District (TCAPCD) have jurisdiction over stationary sources within Tuolumne County (County). CARB maintains numerous air quality monitoring stations located throughout the state that continually measure the ambient concentrations of major air pollutants. The coverage afforded by such stations in Tuolumne County is rather sparse. There is only one monitoring stations in Tuolumne County: an ozone monitoring station in Sonora (about 25 miles northwest of the Project site), which records frequent violations of the federal and state ambient ozone standards, as shown in Table 4.

**TABLE 4: TUOLUMNE COUNTY AMBIENT AIR QUALITY MONITORING SUMMARY**

| Pollutant                               | Ambient Standard | Number of Days Standard was Exceeded and Maximum Concentration Measured |       |       |
|-----------------------------------------|------------------|-------------------------------------------------------------------------|-------|-------|
|                                         |                  | 2014                                                                    | 2015  | 2016  |
| <b>Ozone – Sonora (Barretta Street)</b> |                  |                                                                         |       |       |
| Maximum 8-hour concentration (ppm)      |                  | 0.080                                                                   | 0.078 | 0.091 |
| # Days federal (2015) standard exceeded | 0.070 ppm        | 16                                                                      | 11    | 45    |
| # Days federal (2008) standard exceeded | 0.075 ppm        | 2                                                                       | 4     | 25    |
| # Days state standard equaled/ exceeded | 0.070 ppm        | 20                                                                      | 11    | 46    |

Notes:

ppm = parts per million.

Source: CARB, iADAM: Air Quality Data Statistics <https://www.arb.ca.gov/adam/>

Many other chemical compounds, generally termed toxic air contaminants (TACs), pose a present or potential hazard to human health through airborne exposure. A wide variety of sources, both stationary (e.g., dry cleaning facilities, gasoline stations, emergency diesel-powered generators, etc.) and mobile (e.g.,

motor vehicles, construction equipment, etc.), emit TACs, which can cause long-term health effects (e.g., cancer, birth defects, neurological damage, asthma, bronchitis, or genetic damage) and/or short-term acute effects (e.g., eye watering, respiratory irritation, running nose, throat pain, and headaches). In California, the majority of the estimated carcinogenic/chronic health risk can be attributed to relatively few airborne compounds, the most important being particulate matter from diesel-fueled engines (DPM). The CARB has identified DPM as being responsible for about 70 percent of the cumulative cancer risk from all airborne TAC exposures (CARB, Overview: Diesel Exhaust and Health).

## Regulatory Setting

Ambient air quality standards for major air pollutants (termed “criteria” pollutants) have been established nationally and in California to protect the public from their adverse health effects. The standards specify a maximum concentration over time for each pollutant to avoid adverse health effects from exposure. The standards are designed to protect those segments of the population most susceptible to adverse health impacts (i.e., sensitive receptors), including children, the elderly, people weak from illness or disease, and people engaged in strenuous work or exercise. The most important criteria air pollutants nationally and statewide are: ozone, particulate matter less than ten microns in diameter (PM<sub>10</sub>), particulate matter less than 2.5 microns diameter (PM<sub>2.5</sub>), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>), and lead (Pb).

Based on regional monitoring data, the US Environmental Protection Agency (EPA) has designated the SJV an “extreme” nonattainment area for the federal ozone standard and a “moderate” nonattainment area for the federal PM<sub>2.5</sub> standard; the SJV attains all state and federal ambient air quality standards for the other major criteria pollutants. Because of the relative sparsity of monitoring stations/data in the MCAB, many of its counties (including Tuolumne) are “unclassified” with respect to federal standards for ozone (although Calaveras County to the north and Mariposa County to the south of Tuolumne County are designated “marginal” nonattainment and “moderate” nonattainment, respectively, for ozone), and for federal PM<sub>10</sub> and PM<sub>2.5</sub> standards. The MCAB is in attainment for all state and federal ambient air quality standards for the other major criteria pollutants (EPA, Nonattainment Areas for Criteria Pollutants).

The larger California Air Districts have established their own analytical methodologies and significance thresholds for CEQA air quality analysis within their jurisdictions. This includes the eight-county San Joaquin Valley Air Pollution Control District (SJVAPCD), adjacent to and west of Tuolumne County, which has issued its *Guide for Assessing and Mitigating Air Quality Impacts* (GAMAQI; March 2015). There are no CEQA methodological guidelines from the TCAPCD for projects in Tuolumne County, though TCAPCD has adopted the following CEQA significance thresholds for development-related criteria pollutant emissions:

- ROG: 1000 lbs./day or 100 tons/year
- NO<sub>x</sub>: 1000 lbs./day or 100 tons/year
- PM<sub>10</sub>: 1000 lbs./day or 100 tons/year
- CO: 1000 lbs./day or 100 tons/year

There are also no TCAPCD CEQA significance thresholds for development-related construction fugitive dust emissions or for health risks from construction/operational TAC emissions. Thus, potential Project impacts from fugitive dust were evaluated based on SJVAPCD dust control requirements (SJVAPCD, Regulation VIII - Fugitive PM10 Prohibitions). And potential TAC health impacts were evaluated by the following criteria (which have been widely adopted by many other Air Districts):

- Project TAC emissions increase cancer risk for a maximally exposed individual by 10 chances in one million during the exposure period.
- Project TAC emissions increase the non-cancer Hazard Index for a maximally exposed individual above 1.0 during the exposure period.

Additionally, the SJVAPCD requires that TAC risk/hazard be determined quantitatively by pollutant dispersion modeling in cases where TAC emissions would exceed 100 lbs. /day.

### **Impact Discussion**

The proposed reconstruction of BTC could result in temporary significant air quality impacts during Project construction. However, with implementation of Mitigation Measure AIR-1, fugitive dust emissions from construction activities would be reduced to less-than-significant levels. With Project completion, BTC would have air pollutant emissions less than the Camp's pre-Rim Fire emissions because the new facilities would be built according to the requirements of current more-energy-efficient building codes. With implementation of Mitigation Measure AIR-2, any open burning would only occur on permissible burn days as established by the SJVAPCD. There would be no Project-related increases to operational air pollutant emissions or local TAC health impacts. A discussion of each environmental issue included under Section 3 is presented below.

#### **a) Would the project conflict with or obstruct implementation of the applicable air quality plan?**

By providing an equivalent replacement for BTC facilities destroyed by the Rim Fire, the Project would not have the potential to substantially affect regional housing, employment, population or transportation projections, which are the bases of the emission inventories and control strategies of the attainment plans. Thus, the Project would not significantly impede attainment of the regional air quality goals of the MCAB or of the adjacent San Joaquin Valley Air Basin (SJVAB). Temporary emissions generated during Project construction would be less than the TCAPCD emission thresholds (see discussion in Subsection 3b below) and, therefore, would not be a significant cumulative air pollutant source within the MCAB (see further discussion in Item c below). Thus, the Project would not conflict with or obstruct implementation of applicable air quality plans in the MCAB or SJVAB.

The Project would comply with the federal Clean Air Act requirements that federal agencies ensure that their actions do not cause or contribute to a violation of federal ambient air quality standards and are consistent with the State Implementation Plan attainment strategies/goals. As indicators of compliance, the EPA's General Conformity Rule (EPA General Conformity), specifies specific de minimis thresholds (EPA, General Conformity De Minimis Tables) for ozone and its precursors (i.e., volatile organic



compounds [VOC] and nitrogen oxides [NO<sub>x</sub>]) and the other major criteria pollutants. As shown in Table 5, Project construction and operational emissions are less than the de minimis thresholds for all major criteria pollutants. Thus, the Project would be in conformance with California's State Implementation Plan (SIP) for attainment of federal air quality standards.

**b) Would the project violate any air quality standard or contribute substantially to an existing or projected air quality violation?**

Construction of the BTC facilities is expected to begin in 2020 and to take about two years. It would generate temporary emissions of air pollutants in equipment exhaust and fugitive dust from equipment and material movement. Equipment emissions were estimated by the California Emissions Estimator Model (CalEEMod, Version 2016.3.2) and compared with the TCAPCD significance thresholds.

Table 6 and Table 7 present the following emission estimates: daily average by phase, total by construction activity, and average annual. All Project construction-related emissions would be well below the TCAPCD thresholds.

In order to limit the generation of fugitive dust, which together with particulate emissions from construction equipment exhaust could expose nearby residences (local sensitive receptors) located west of the BTC Project to elevated PM<sub>10</sub> and PM<sub>2.5</sub> levels during project construction, construction best management practices must be implemented as specified in Mitigation Measure AIR-1.

In addition, there may be occasional open burning associated with either construction or ongoing vegetation management activities. Mitigation Measure AIR-2 would assure that such burning would only occur on permissible burn days and not impact state and federal ambient air quality standards.

After Project construction is complete, the operational air pollutant emissions associated with the rebuilt BTC would be less than significant as shown in Table 5.

**TABLE 5: PROJECT EMISSIONS AND COMPARISONS WITH EPA DE MINIMIS THRESHOLDS (TONS/YEAR)**

| Pollutant                               | Tuolumne County Federal Attainment Status <sup>a</sup> | Tuolumne County De Minimis Threshold <sup>b</sup> | Project Construction Emissions <sup>c</sup> | Project Operational Emissions <sup>d</sup> |
|-----------------------------------------|--------------------------------------------------------|---------------------------------------------------|---------------------------------------------|--------------------------------------------|
| Ozone (O <sub>3</sub> ) <sup>e</sup>    | Unclassified                                           | 100                                               | 2.6                                         | 0.20                                       |
| Oxides of Nitrogen (NO <sub>x</sub> )   | Attainment                                             | 100                                               | 2.4                                         | 0.07                                       |
| Reactive Organic Gases (ROG)            | ----                                                   | 50                                                | 0.2                                         | 0.13                                       |
| Volatile Organics (VOCs) <sup>f</sup>   | ----                                                   | 50                                                | 0.2                                         | 0.13                                       |
| Particulate Matter (PM <sub>2.5</sub> ) | Unclassified                                           | 100                                               | 0.1                                         | 0.01                                       |
| Particulate Matter (PM <sub>10</sub> )  | Unclassified                                           | 100                                               | 0.1                                         | 0.03                                       |
| Carbon Monoxide (CO)                    | Attainment                                             | 100                                               | 2.1                                         | 0.26                                       |
| Sulfur Dioxide (SO <sub>2</sub> )       | Attainment                                             | 100                                               | < 0.1                                       | 0.01                                       |
| Lead (Pb)                               | Attainment                                             | 25                                                | 0                                           | 0                                          |

Emission estimates assume project construction equipment with California-average emitting engines during the 2019-2020 construction phases.

- <sup>a</sup> Source: EPA, Nonattainment Areas for Criteria Pollutants (Green Book) <https://www.epa.gov/green-book>
- <sup>b</sup> Source: EPA, General Conformity De Minimis Tables <https://www.epa.gov/general-conformity/de-minimis-tables>
- <sup>c</sup> Emissions were calculated using the CalEEMod Model, Version 2016.3.2 and include emissions from construction equipment and construction worker trips.
- <sup>d</sup> The City of Berkeley's Tuolumne Camp (BTC) was in continuous operation for 91 years before being substantially destroyed in August 2013 by the Rim Fire. The proposed Project would reconstruct BTC facilities to current code and operate BTC much as it was prior to the Rim Fire. Operationa emissions were calculated using the CalEEMod model initialized with Project building specifications, daily motor vehicle trips identified in the Transportation and Circulation section of this Initial Study and utility data from operations of the previous BTC provided by the City of Berkeley.
- <sup>e</sup> Ozone is not directly emitted but is formed from its precursors, NOx and ROG. Thus, ozone emissions were taken to be the sum of the two precursors.
- <sup>f</sup> VOCs are similar to ROGs but are not directly calculated by CalEEMod. However, for their effect on ozone formation, VOC emissions were assumed to be equivalent to ROG emissions.

**TABLE 6: PROJECT CONSTRUCTION AIR POLLUTANT EMISSIONS - AVERAGE DAILY (LBS. PER WORKDAY)**

| Construction Activity (Duration)                                  | ROG         | NOx         | PM <sub>10</sub> | CO          |
|-------------------------------------------------------------------|-------------|-------------|------------------|-------------|
| Demolition / Grading (90 workdays)                                | 1.8         | 18.8        | 0.9              | 15.9        |
| Paving (20 workdays)                                              | 1.5         | 15.0        | 0.7              | 10.2        |
| Electrical Supply (48 workdays)                                   | 0.7         | 6.5         | 0.5              | 5.1         |
| Water Supply (60 workdays)                                        | 0.9         | 8.2         | 0.5              | 6.9         |
| Wastewater Treatment (90 workdays)                                | 1.2         | 11.4        | 0.7              | 9.3         |
| Utility /Pedestrian Bridge (75 workdays)                          | 0.9         | 9.8         | 0.7              | 6.7         |
| Administrative /Staff Facilities (240 workdays)                   | 0.7         | 6.9         | 0.4              | 6.6         |
| Camper Facilities (240 workdays)                                  | 0.7         | 6.9         | 0.4              | 6.6         |
| Social, Recreation, Education Structures/Use Areas (240 workdays) | 0.7         | 6.9         | 0.4              | 6.6         |
| <b>TCAPCD Significance Thresholds</b>                             | <b>1000</b> | <b>1000</b> | <b>1000</b>      | <b>1000</b> |
| <b>Significant Impact?</b>                                        | <b>No</b>   | <b>No</b>   | <b>No</b>        | <b>No</b>   |

**TABLE 7: PROJECT CONSTRUCTION AIR POLLUTANT EMISSIONS – TOTALS BY PHASE AND ANNUAL AVERAGE (TONS)**

| Construction Activity (Duration)                | ROG   | NOx | PM <sub>10</sub> | CO  |
|-------------------------------------------------|-------|-----|------------------|-----|
| Demolition / Grading (90 workdays)              | 0.1   | 0.8 | < 0.1            | 0.7 |
| Paving (20 workdays)                            | < 0.1 | 0.2 | < 0.1            | 0.1 |
| Electrical Supply (48 workdays)                 | < 0.1 | 0.2 | < 0.1            | 0.1 |
| Water Supply (60 workdays)                      | < 0.1 | 0.2 | < 0.1            | 0.2 |
| Wastewater Treatment (90 workdays)              | 0.1   | 0.5 | < 0.1            | 0.4 |
| Utility /Pedestrian Bridge (75 workdays)        | < 0.1 | 0.4 | < 0.1            | 0.2 |
| Administrative /Staff Facilities (240 workdays) | 0.1   | 0.8 | 0.1              | 0.8 |
| Camper Facilities (240 workdays)                | 0.1   | 0.8 | 0.1              | 0.8 |

|                                                                   |            |            |            |            |
|-------------------------------------------------------------------|------------|------------|------------|------------|
| Social, Recreation, Education Structures/Use Areas (240 workdays) | 0.1        | 0.8        | 0.1        | 0.8        |
| <b>Average Annual Emissions from All Construction Phases</b>      | <b>0.2</b> | <b>2.4</b> | <b>0.1</b> | <b>2.1</b> |
| <b>TCAPCD Significance Thresholds</b>                             | <b>100</b> | <b>100</b> | <b>100</b> | <b>100</b> |
| <b>Significant Impact?</b>                                        | <b>No</b>  | <b>No</b>  | <b>No</b>  | <b>No</b>  |

**c) Would the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is nonattainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?**

As discussed in Subsection 3b above, Project-related construction and operational emissions would be well below the CEQA significance thresholds. Also, Project-specific TAC emissions (largely DPM, a form of PM<sub>2.5</sub>, in equipment exhaust) would be well below the level requiring a quantitative health risk assessment, as discussed further in Subsection 3d below. Therefore, the Project would not make cumulatively considerable contributions to the MCAB or SJVAB problems with ozone, particulate matter or TAC health risks. Thus, cumulative emission impacts would be less than significant.

**d) Would the project expose sensitive receptors to substantial pollutant concentrations?**

The greatest potential for adverse ambient pollutant impacts would be from the exposure of nearby sensitive receptors to the DPM emitted by the diesel-powered equipment during Project construction. As shown in Table 6 above, the emissions of DPM (in PM<sub>10</sub>) would fall far short of the 100 lbs./day level that would trigger the need for dispersion modeling. Additional factors weighing against the potential for significant health impacts from project DPM emissions are the relatively large Project site area over which the DPM emissions would be spread and the relatively long distance (more than 1,000 feet to the closest residence) over which the DPM would disperse during transport to the sensitive receptors. Thus, no significant adverse health impacts would be expected from project construction DPM.

**e) Would the project create objectionable odors affecting a substantial number of people?**

The Project construction fleet would operate over a relatively large Project site area and be relatively distant from odor sensitive receptors (more than 1,000 feet to the closest residence). Thus, any perceptible odor impacts from construction equipment exhaust to the local residents would be transitory as the locus of construction activity moves around the Project site during construction. Therefore, odor impacts associated with Project construction would be less than significant.

### **Mitigation Measures**

**AIR-1** A construction-phase Dust Control Plan (DCP) shall be prepared prior to the start of any Project construction activity. The DCP shall include all basic emission control measures (listed below) and any additional measures applicable to the project and necessary to reduce off-site migration of fugitive dust:

*Basic Control Measures*

- All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.
- All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
- All land clearing, grubbing, scraping, excavation, land leveling, grading, cut & fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
- With the demolition of buildings, all exterior surfaces of the building shall be wetted during demolition.
- When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.
- All operations shall limit or expeditiously remove the accumulation of mud or dirt from Hardin Flat Road at the end of each workday. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions; use of blower devices is expressly forbidden.)
- Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.
- Any site with 150 or more vehicle trips per day shall prevent carryout and track-out.

*Enhanced Control Measures (as necessary and appropriate)*

- Limit traffic speeds on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways from areas with a slope greater than one percent.

*Additional Control Measures (as necessary and appropriate)*

- Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site.
- Install wind breaks at windward side(s) of construction areas.
- Suspend excavation and grading activity when winds exceed 20 mph, or when fugitive dust exiting the site exceeds the 20 percent opacity limit, regardless of wind speed.
- Limit area subject to excavation, grading, and other construction activity at any one time.

**AIR-2** Acquire burn permits from the Tuolumne County Air pollution Control District. The California Air Resources Board provides daily information on "burn" or "no burn" conditions. Design and implement burn plans to minimize particulate emissions. Notify the

Groveland District Wildlife Biologist prior to pile burning to minimize disturbance to protected or sensitive species.

## References

- CAPCOA (California Air Pollution Control Officers Association). California Emissions Estimator Model [CalEEMod]. Available on website: <http://www.caleemod.com>
- CARB (California Air Resources Board). California Air Basins. Available on website: <https://www.arb.ca.gov/desig/airbasins/airbasins.htm>
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- SJVAPCD. Current District Rules and Regulations - Regulation VIII - Fugitive PM10 Prohibitions – Rule 8021, Construction, Demolition, Excavation, Extraction, and other Earthmoving Activities. Available on website: <http://www.valleyair.org/rules/currnrules/r8021.pdf>
- United States Department of Agriculture, Stanislaus National Forest. 2017. Forest Plan Direction - Stanislaus National Forest, Sonora, CA.

|                                                                                                                                                                                                                                                                                                                     | Potentially Significant Impact | Potentially Unless Mitigation Incorporated | Significant Less Than Significant Impact | No Impact                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------------------|------------------------------------------|--------------------------|
| <b>4. BIOLOGICAL RESOURCES.</b> Would the project:                                                                                                                                                                                                                                                                  |                                |                                            |                                          |                          |
| a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service? | <input type="checkbox"/>       | <input checked="" type="checkbox"/>        | <input type="checkbox"/>                 | <input type="checkbox"/> |
| b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or US Fish and Wildlife Service?                                                                | <input type="checkbox"/>       | <input checked="" type="checkbox"/>        | <input type="checkbox"/>                 | <input type="checkbox"/> |
| c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?                                                 | <input type="checkbox"/>       | <input type="checkbox"/>                   | <input checked="" type="checkbox"/>      | <input type="checkbox"/> |
| d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?                                                                                  | <input type="checkbox"/>       | <input checked="" type="checkbox"/>        | <input type="checkbox"/>                 | <input type="checkbox"/> |
| e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?                                                                                                                                                                                 | <input type="checkbox"/>       | <input type="checkbox"/>                   | <input checked="" type="checkbox"/>      | <input type="checkbox"/> |
| f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?                                                                                                                                | <input type="checkbox"/>       | <input type="checkbox"/>                   | <input checked="" type="checkbox"/>      | <input type="checkbox"/> |

## Environmental Setting

### *Aquatic Wildlife*

**California Red-legged Frog.** The BTC SUP area contains non-breeding aquatic habitat, upland habitat and dispersal habitat suitable for use by the California red-legged frog, but does not contain suitable breeding habitat. The nearest suitable breeding habitat historically occurred in two ponds on the South Fork Tuolumne River located on private property in the vicinity of Hardin Flat, about one mile west of the Project area. One of these ponds was created by a weir structure operated by the Yosemite Lakes RV Resort. Staff at the Yosemite Lakes RV Resort stated that the weir boards have not been installed in at least eight years, which means this pond has not been present for at least the last eight years. The second pond was created by a weir structure located downstream of the Yosemite Lakes RV Resort. Staff at the Yosemite Lakes RV Resort indicated that this second weir has not been operated in several years as well, and that sediment has filled in this pond area. Breeding habitat quality in this area is low to unsuitable due to the prolonged absence of ponded water, presence of a self-sustaining population of the non-native, predatory bullfrog (*Rana catesbeiana*) and moderate levels of residential development adjacent to the ponds.

**Foothill Yellow-legged Frog.** The foothill yellow-legged frog frequents rocky streams and rivers with open, sunny banks, in forests, woodlands, and chaparral. It is rarely found far from water. The South Fork Tuolumne River provides good quality and quantity of habitat for the foothill yellow-legged frog. The river is low to moderate in gradient (less than four percent) with ample cobble bar habitat for breeding. The riparian canopies provide an adequate mix of shading conditions ranging from very dense (greater than 80 percent) to open (less than 25 percent) areas ideal for basking. However, almost all known populations of this species occur at elevations below 3,000 feet. The portion of the river in the BTC SUP area is near the upper elevational limit of the species on the Stanislaus National Forest and several hundred feet higher than the highest known local population of foothill yellow-legged frog (3,200 feet, Bull Meadow Creek). Given their typical elevation range and a lack of detections in the Project vicinity, it is very unlikely that the foothill yellow-legged frog would occur on the Project site.

**Western Pond Turtle.** The western pond turtle is most often associated with rivers and streams, but may also use ponds and lakes. It requires basking structures such as rocks and logs, as well as underwater refugia such as submerged rocks and woody debris. It nests during the summer in open, sunny areas up to 0.25 mile from water, and overwinters up to 0.3 mile from water at sites with a deep layer of duff or litter beneath shrubs or trees. The section of the South Fork Tuolumne River that flows through the BTC Project site provides suitable aquatic habitat for the western pond turtle. There is ample deep pool habitat in combination with basking habitat provided by bedrock and large woody debris. Unburned areas of the BTC SUP area with dense shrub or tree canopy cover provide suitable terrestrial refuge for overwintering. Turtles prefer to nest in areas of low slope dominated by herbaceous vegetation. Those portions of the Camp that burned at the greatest intensity during the Rim Fire have reverted to seedling-stage mixed conifer forest in which herbaceous vegetation dominates. Some of these areas are relatively flat and therefore suitable for nesting by the western pond turtle.

The reach of Thimbleberry Creek that flows through the Project site provides poor quality aquatic habitat. This stream has a high gradient, low water temperatures, a lack of basking sites, and lacks the pool development needed by turtles in small streams.

### *Terrestrial Wildlife*

**Great Gray Owl.** In addition to being a Forest Service Sensitive (FSS) species, the great gray owl is listed by the state of California as Endangered. Great gray owls are regarded as locally rare throughout their range in USFS Region 5, with a recent population estimate of 200-300 individuals in California. The majority of consistently occupied great gray owl territories in California are located in the Groveland Ranger District and adjacent Yosemite National Park. Recent genetic studies suggest this Sierran population is genetically distinct from other populations in Oregon, Washington, and Canada.

A post-fire Protected Activity Center (PAC) evaluation conducted by Stanislaus National Forest found that there are 13 great gray owl sites located within the Rim Fire perimeter on USFS lands. This represents half of all great gray owl sites on the Stanislaus National Forest and a significant proportion of the estimated population size of 80 to 100 individuals for this species. All of the great gray owl PACs in the Rim Fire burned at mixed severities. Overall, about half of all PAC acres burned at high severity, and

at least two nest trees were lost in the fire. However, because great gray owls may nest in burned forest, and because post-fire conditions may provide preferred foraging habitat in the short-term, great gray owls may still occupy their historic PACs.

One great gray owl territory occurs about two miles east of the BTC SUP area. The PAC is centered on a network of meadows, the largest of which is Crocker Meadow. Great gray owls were detected in the Crocker Meadow area during USFS surveys in 2005, 2006, 2007, and 2008. In 2007 a great gray owl was found nesting in a white fir snag, but the tree fell before any young had fledged. Nesting was not observed during the other survey years, and has not been observed since. Past studies of great gray owls from Yosemite suggest birds moving to lower elevations in winter regularly visit the Crocker Meadow area.

The Project site does not offer suitable habitat for the great gray owl. Onsite trees lack the size and structural characteristics favored by nesting owls, and open areas at the Camp are too small and/or too disturbed to be used for foraging. However, there is suitable great grey owl habitat in the Project vicinity. Several openings on private lands and drainages and associated small “stringer” meadows in the Project vicinity provide foraging habitat, while canopy cover in the surrounding area is relatively dense and contains large trees suitable for nesting. The Crocker Meadow PAC, about two miles from the BTC SUP area, contains high-quality nest habitat adjacent to a complex of meadows.

**California Spotted Owl.** Three PACs for California spotted owl occur within two miles of the BTC SUP area. The post-fire PAC evaluation found all three PACs suitable for occupancy following the Rim Fire. The first, TUO-0010, is a 458-acre area centered on the Soldier Creek drainage and Hardin Flat Road that formerly overlapped the Project site, but has recently been redrawn to exclude the Project site. This PAC has been consistently occupied by spotted owl individuals or pairs during annual U.S. Forest Service (USFS) surveys since 2003, including nesting in 2015 about 0.6 mile from BTC SUP boundaries confirmed by the USFS. The second, TUO-0011, is a 492-acre area located about 1.5 miles south of the Project site along upper Big Creek. It was occupied by spotted owl individuals or pairs during survey years 2005-2008 and 2014. The third, TUO-0026, is a 384-acre area located about 1.5 miles east of the Project site between Soldier and Rush Creeks. A pair was present in this PAC in 2014, but no nesting was confirmed.

The breeding cycle of the California spotted owl extends from mid-February to mid or late-September. Disturbance during the egg-laying stage through the incubation stage, a period extending from early April through mid-May, may result in nest abandonment or failure. Young owls typically fledge from the nest in mid- to late June. For the first several weeks they are very weak flyers and do not move far from the nest tree. Thus, nesting birds and their young are sensitive to disturbance from mid-February to mid-August.

Recent research indicates that California spotted owls will occupy landscapes that experience low-to-moderate-severity wildfire, as well as areas with mixed-severity wildfire that include some proportion of high-severity fire. Spotted owls with burned forest in their home range appear to utilize a variety of prey,



including gophers, flying squirrels, wood rats, sciurid squirrels, and deer mice. The time elapsed since a fire is closely correlated with habitat elements and composition of prey species. For example, post-fire habitats are typically rich in gophers and deer mice in the first decade following a fire, followed by wood rats when understory conditions are well developed in the first and following decades, and finally by sciurid squirrels and flying squirrels when trees reach maturity.

The spotted owl PAC adjacent to the Project site, TUC-0010, contains late-seral, closed-canopy habitat consistently occupied by spotted owls. However, this PAC and high-quality areas elsewhere on the SNF are not contiguous, having been affected by the Rim Fire and earlier fires in 1944 and 1987, as well as past and ongoing salvage logging, hazard tree removal, and the recent Crush timber sale. The PAC also partially overlaps with a designated wildland-urban interface (WUI) area that encompasses the area around Hardin Flat development.

The early- to mid-seral Sierran mixed conifer forest of the BTC SUP area does not represent suitable nesting habitat for the California spotted owl owing to its relatively open canopy and shortage of very large trees. However, owls would be expected to forage in this habitat from time to time. In fact, forested areas of the project site may be more suitable for spotted owl foraging under present conditions than before the Rim Fire, as the fire resulted in an increased concentration of snags and downed woody material favoring owl prey, particularly north of Hardin Flat Road. The Project site may also be used as a movement corridor for owls traveling between different portions of the adjacent PAC, or traveling from the PAC to other areas on the Stanislaus National Forest.

**Northern Goshawk.** In addition to being a FSS species, the northern goshawk is a California Species of Special Concern. The northern goshawk occurs throughout the northern hemisphere in coniferous forests. The status and trend of goshawks in the Sierra Nevada and the Stanislaus National Forest is difficult to assess, due to inconsistent breeding success and survey efforts.

A post-fire PAC evaluation conducted by Stanislaus National Forest in collaboration with the USFS Pacific Southwest Research Station found that 22 northern goshawk sites are contained within the Rim Fire perimeter. Of these, four are located in areas that burned at high severity and have small amounts of remaining suitable habitat, such that there is low to no probability of continued occupancy. Fifteen sites are located in areas that burned at lower severity and have high amounts of remaining suitable habitat, suggesting likely continued occupancy. The remaining three sites have intermediate values, and occupancy probabilities are uncertain.

There are no goshawk PACs overlapping the BTC SUP area. However, two PACs, identified as PAC 54-43 and PAC 54-07, are located within a mile of the site. The post-fire PAC evaluation found that both PACs remained suitable for occupancy by northern goshawks after the Rim Fire. PAC 54-43 is a 336-acre area in the Soldier Creek area about 0.5 mile east of the Project site. It was occupied in USFS surveys conducted in 2011, but has not had confirmed nesting since that time. PAC 54-07 is a 258-acre area located in the Big Creek Basin about 0.8 mile south of the project site. Although it has historically

been a successful territory, it has not been consistently surveyed for several years. An adult goshawk was detected in this PAC in 2014, but nesting was not confirmed.

The early- to mid-seral Sierran mixed conifer forest of the BTC SUP area does not represent suitable nesting habitat for the northern goshawk owing to its relatively open canopy and shortage of very large trees, nor is it typical of habitats in which goshawks usually forage. However, the Project site may also be used as a movement corridor for goshawks traveling between the nearby PACs to other areas on the Stanislaus National Forest.

**Townsend's Big-eared Bat.** Although there are no known natal roosts for this species in the BTC SUP area, there is likely suitable foraging habitat in the site's riparian areas and edge habitats. Potentially suitable roosting habitat occurs in the few Camp buildings that were not destroyed by the Rim Fire, as well as in abandoned mines in the surrounding landscape. Individual foraging bats likely move through the Project site occasionally.

**Pallid Bat.** The status of the species is not well researched, but North American pallid bat populations have declined over the past 50 years and data from California suggest population declines associated with desert and oak woodland habitat loss due to urban expansion. Prior to the Rim Fire, USFS biologists documented pallid bats roosting at a bridge and in cabins on the Project site, and detected pallid bats calling while foraging on adjacent lands. USFS surveys also detected pallid bats roosting at two bridges on the South Fork Tuolumne River near the Project site. The CNDDDB lists several occurrences of pallid bat within a ten-mile radius of the Project site.

As described above, pallid bats were known to roost in BTC cabins prior to the Rim Fire, and may continue to roost in the remaining structures. Individuals of the species may also roost on the Hardin Flat Road bridge over the South Fork Tuolumne River, in snags or oak trees in the forested area north of Hardin Flat Road, or in trees or human-built structures on surrounding lands. Pallid bats likely forage regularly in the area, particularly near openings and roads.

**Fringed Myotis.** The fringed myotis occurs from southern British Columbia south through the western United States and most of Mexico. The fringed myotis is a widely distributed species, but it is considered rare. Population estimates and trends for the fringed myotis are unavailable, but the limited data that is available suggests the population is declining. Not only have historic maternity colonies disappeared, but those remaining appear to contain fewer individuals. Bat surveys conducted by the SNF have documented individuals of this species near the BTC Project site on a bridge over the South Fork Tuolumne River, and at various other locations on the SNF including Fahey Pond and the Hetch Hetchy adit at the end of Road 1N45.

Potential roosting habitat for the fringed myotis occurs in the remaining buildings on the Project site, as well as the Hardin Flat Road bridge over the South Fork Tuolumne River. The larger snags in the forested area north of Hardin Flat Road also have the potential to be used for roosting by this species. The fringed myotis may forage in the site's remaining forested areas, edge habitats, and secondary streams.

### *Sensitive Plants*

**Slender-Stemmed Monkey Flower.** Seven subpopulations of slender-stemmed monkey flower (about 45 plants) were identified within the BTC Project area during 2015 botanical surveys. The availability of adequate sunlight and water, coupled with low levels of competition from weedy annuals or encroaching brush or tree canopies are the factors allowing this species to perpetuate.

As evidenced by review of historic Google aerial photography, during non-drought conditions, most of the locations where slender-stemmed monkey flower was found in 2015 would normally be under water. The subpopulations along the rivers' edge are typically under water all year round during years of normal rainfall. The drought conditions of the last few years combined with the post-fire soil erosion and deposition allowed the seed to be deposited in locations not previously observed by USFS biologists in 2009 which was located about 100 – 200 feet upstream and downstream, respectively, of the observed subpopulations in 2015. The subpopulation from 2009 was not observed in 2015. Fluctuating water levels associated with weather patterns indirectly effect the subpopulations of slender-stemmed monkey flower, regardless of which alternative is chosen. There appears to be much flux in distribution and abundance of this annual small-seeded plant.

### **Regulatory Setting**

BTC is located in SNF and under the jurisdiction of the USFS and subject to the requirements of the *Forest Plan Direction* (USDA 2017).

### **Impact Discussion**

The proposed Project could result in potentially significant impacts to slender-stemmed monkey flower, western pond turtle, great gray owl, California spotted owl, Townsend's big-eared bat, pallid bat and fringed myotis. However, with implementation of Mitigation Measures BIO-1 – 8, potentially significant impacts would be less than significant. A brief discussion of each environmental issue included under Section 4 is presented below.

- a) **Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?**

### *Aquatic Wildlife*

**California Red-legged Frog.** The BTC SUP area does not contain the full range of habitat elements required by the California red-legged frog. Specifically, suitable breeding habitat is absent from the Project site and a one-mile vicinity. Because the Project site lacks the four primary constituent elements (PCEs) essential for the California red-legged frog, and because the species is considered extirpated from the Tuolumne River watershed, occupancy of the Project site is considered unlikely, and the proposed Project is not expected to affect individual California red-legged frogs or their habitats.

**Foothill Yellow-legged Frog.** Suitable habitat for the foothill yellow-legged frog exists on the BTC SUP area, but is assumed to be unoccupied. Multiple surveys in the project vicinity have not detected the

frog and the project site is outside of the local elevation range of this species. The Project would make improvements to streams of the site through restoration and erosion control projects. Important habitat elements such as stream shading and near-stream cover would be enhanced through proposed riparian revegetation efforts. The Project is not expected to affect individual foothill yellow-legged frogs or their habitats.

**Western Pond Turtle.** Construction activities of limited concern include revegetation, stream restoration and erosion control within stream corridors and represent potential significant impacts to the western pond turtle including: physical disturbance, injury, and mortality of individuals and/or destruction of nests during should turtles occupy the BTC SUP area.

The western pond turtle requires prolonged uninterrupted periods to facilitate basking and nesting. Construction-related noise and the physical presence of workers associated with the BTC project might disturb turtles, potentially affecting the frequency and duration of basking or foraging, thwarting attempts by female turtles to nest, or even promoting dispersal away from the area. However, it is important to note that any western pond turtles occupying this reach of the South Fork Tuolumne River tolerate a “baseline” moderate to high level of disturbance, depending on the season, under existing conditions. BTC was in operation for over 90 years prior to the Rim Fire. Human disturbance within Camp boundaries has occurred via dispersed camping for the four years since the fire and recreational and residential use of surrounding lands has continued. Development associated with the Yosemite Lakes RV Resort lines the river for about 0.6 mile, beginning 0.4 mile downstream of the BTC project site. Between the Camp and the Yosemite Lakes RV Resort are a number of residences and vacation homes. For about one mile downstream of the Camp, Hardin Flat Road closely parallels the river to the north, ultimately crossing the river in the southeastern portion of the Project site. Camp activities would result in an increase in disturbance beyond this baseline level; however, these activities would be relatively short-term, and are expected to have only a minor effect on this species.

Although unlikely, construction-related injury/mortality of western pond turtles or their eggs could occur as a result of construction activities. For example, equipment could crush turtles or eggs hidden in streamside vegetation or sandy soils, should they be present. Because such an event is unlikely to occur, injury/mortality of western pond turtles or eggs related to project activities of limited concern would constitute a minor project-related risk for this species.

Construction activities of limited concern would produce no indirect negative effects for the western pond turtle because the quality of aquatic and riparian habitat would increase following these activities. The turtle would be expected to benefit from decreased sedimentation of the river resulting from erosion control measures and increased riparian cover resulting from revegetation.

The majority of ground disturbance construction would take place in upland habitats and represents construction activities of greatest concern to the western pond turtle. Ground disturbing activities have the potential to directly affect nesting female turtles and their eggs resulting in physical disturbance, injury, and mortality of individuals and/or destruction of nests and a reduction in quantity and quality of

terrestrial habitats, such as dense shrub or tree canopy cover that could be used by turtle for overwintering, as well as open sites suitable for nesting.

The proposed Project includes construction of new structures, roads, and parking lots. The construction of buildings and roads within forested habitats on the Project site would reduce the amount of overwintering habitat that is available to western pond turtles. The two parking lots proposed for construction are to be located in previously burned and cleared areas that are now in seedling-stage mixed conifer forest. One of the parking lots is to be constructed either within the main camp area or east of Hardin Flat Road, where slopes are too steep to be suitable as western pond turtle nesting habitat. The other parking lot is to be constructed beneath the PG&E power lines north of Hardin Flat Road, in a relatively flat area suitable for turtle nesting.

Mitigation Measures BIO-1 through BIO-4 would reduce potentially significant impacts to aquatic wildlife to less than significant.

### ***Sensitive Plants***

BTC reconstruction and Camp operation could have direct effects on all subpopulations of the slender-stemmed monkey flower consisting of about 45 plants as surveyed in 2015. Reconstruction of rock walls proposed around beach areas, and manual deposition and extraction of granite fines annually could directly impact the majority of the subpopulation and suitable habitat for this species at the beach area location. Approximately 30-35 plants were found in this subpopulation, which equates to about 75 percent of the population in the permit area. However, as an annual, seed germination from this subpopulation like others along the river's edge will fluctuate greatly from year to year and/or seed might be transported downstream depending on annual river flows.

The Camp would have designated pathways and trails located away from the population not on the South Fork Tuolumne River, however, there would still be a potential risk of impacts to the population from campers that might wander off trails. Any type of ground disturbance during the growing season could cause mortality to individuals prior to fruit being set. Disturbance during the non-growing season would likely do less harm to this annual population than disturbance during the growing season, since there would be no plants affected.

Parking lots would be "permeable", allowing petroleum pollutants and moisture to permeate through the surface and infiltrate through the soil profile. This would alleviate adverse indirect effects to the population from pollutants generated at the parking lot by parked vehicles and increased surface runoff.

Mitigation Measure BIO-5 would reduce potentially significant impacts to the slender-stemmed monkey flower to less than significant.

### ***Terrestrial Wildlife***

**Spotted Owl.** The California spotted owl is not expected to nest on the BTC project site owing to the relatively open canopy of the site's early- to mid-seral Sierran mixed conifer forest, shortage of very large

trees, and large numbers of trees damaged or removed as a result of the Rim Fire. However, the spotted owl PAC adjacent to the project site, TUC-0010, has consistently been occupied by owl individuals or pairs since 2003, with an active nest identified about 0.6 mile from permit area boundaries in 2015. If an active nest is discovered within the BTC SUP area, protective measures will be implemented in consultation with a USFS biologist. Hand construction of the proposed Small Falls Trail would cross the adjacent spotted owl PAC, and would not be subject to limited operating periods (LOPs) as no trees would be removed. For these reasons, it is highly unlikely that the project would result in injury or mortality of spotted owls, nor disturb owls such that they would abandon their nests.

Spotted owls would be expected to forage in forested areas of the BTC Project site from time to time. The fire resulted in an increased concentration of snags and down woody material favoring owl prey, particularly north of Hardin Flat Road. Individual owls foraging on the Project site during construction or operation of the Camp may be subjected to periodic noise disturbance, but are highly unlikely to be injured or killed by Project activities owing to the mobile nature of the species. If a spotted owl were observed on-site during construction, activities would be halted and assessed, limiting the severity of disturbance.

The BTC Project site does not offer suitable nesting habitat for the California spotted owl; hence, the proposed Project will produce no indirect effects for this species related to reduction in quantity or quality of nesting habitat.

Spotted owls could potentially use forested portions of the BTC Project site for foraging. Most project construction will occur in areas that burned during the Rim Fire and were subsequently logged under the Rim Fire Hazard Trees project. However, forested areas north of Hardin Flat Road are proposed for construction of parking, staff housing and expansion of an existing leach field. An undetermined number of live and dead trees may be removed from a 1.4-acre area to meet code requirements for the leach field. Although no live tree removal is anticipated for construction of staff housing, the level of human disturbance in this area would increase, consequently reducing its suitability as spotted owl foraging habitat. The areas in question consist of early- to mid-seral Sierran mixed conifer forest bisected by a power line corridor producing “edge” habitat along its margins. Although these forested areas are somewhat more suitable as spotted owl foraging habitat post-fire owing to increased concentrations of snags and down logs, they are still considerably less suitable than the neighboring spotted owl PAC, which consists of late-seral, closed-canopy forest. Loss of potential foraging habitat for the spotted owl in the forested areas north of Hardin Flat Road would produce, at most, minor negative effects for this species because the area is only of modest foraging value to the owl, and the Camp is surrounded by more suitable habitats contained in the adjacent PAC.

**Great Gray Owl / Northern Goshawk.** The BTC Project site does not offer suitable nesting habitat for the great gray owl or northern goshawk. The trees of the site are generally too small to be used for nesting by these species, lack the structural characteristics favored by great gray owls, and are located in relatively open-canopy forests not favored by northern goshawks. In the unlikely event that an active great gray owl or northern goshawk nest were identified on or within one-quarter mile of the site during

surveys for nesting FSS raptors, protective measures would be implemented in consultation with a USFS biologist. For these reasons, the project is not expected to disturb nesting great gray owls or northern goshawks.

The BTC Project site is not expected to be used for foraging by these FSS raptors. Open areas at the Camp are too small and/or too disturbed to be used by foraging great gray owls, and the site lacks mature forests typical of northern goshawk foraging habitat. Therefore, the project is not expected to affect foraging great gray owls or northern goshawks.

Both species may pass over the site when moving between more suitable habitats. If a FSS raptor were observed on-site during project implementation, activities would be halted and be re-assessed, limiting the severity of disturbance.

The BTC Project site does not offer suitable nesting habitat for the great gray owl or northern goshawk; hence, the proposed project will produce no indirect effects for these species related to reduction in quantity or quality of nesting habitat. Moreover, the site offers neither mature forest for foraging by the northern goshawk, nor suitable meadow habitat for foraging by the great gray owl. Therefore, the BTC Project will produce no indirect effects for the northern goshawk or great gray owl related to reduction in quantity or quality of foraging habitat.

**Townsend's Big-Eared Bat, Pallid Bat and Fringed Myotis.** The BTC Project site contains suitable roosting habitat for FSS bat species in the remaining buildings, on the bridge over the South Fork Tuolumne River, and in the forested area north of Hardin Flat Road. Additionally, the site offers suitable foraging habitat for the Townsend's big-eared bat along streams and edges, for the pallid bat in open areas, and for the fringed myotis in these habitats or the site's remaining forested areas. Project-related disturbance has the potential to disrupt foraging activity and result in the abandonment of active roosts, and physical disturbance to, or removal of, roost sites may result in injury or mortality of individual bats. Installation of new leach lines and expansion of an existing leach field north of Hardin Flat Road would require removal of live and dead trees within an area of up to 1.4 acres to meet code requirements. Some trees in this area might be suitable for roosting by the pallid bat and/or fringed myotis. A survey for roosting FSS bats will be conducted at all suitable roost trees to be removed by the project. If an active FSS bat roost is discovered, a USFS biologist will be consulted, and appropriate protective measures implemented. For these reasons, it is unlikely that the Project will result in the injury or mortality of any FSS bats.

Proposed Project activities could reduce the quantity or quality of roosting or foraging habitats for FSS bat species. In particular, removal of trees might eliminate roosting habitat, and construction of camp facilities within previously undisturbed areas may decrease the quality of roosting and foraging habitat. As discussed, installation of new leach lines and expansion of an existing leach field north of Hardin Flat Road would require removal of live and dead trees within an area of up to 1.4 acres. This activity, along with removal of hazard snags throughout the 30-year permit term, may reduce potential roosting habitat for the pallid bat and fringed myotis. No tree removal is proposed for construction of staff housing in

the forested area north of Hardin Flat Road; therefore, no roosting habitat will be lost as a result of this project component. However, because the level of human disturbance within this forested area will increase, the suitability of this area as roosting and foraging habitat for FSS bat species may decrease. Because similar or higher quality foraging and roosting habitat for FSS bat species occurs in abundance on surrounding lands, slight reductions in the quantity and quality of foraging and roosting habitat on the BTC Project site would be expected to produce only minor negative effects for these species.

Proposed BTC Project activities also include habitat improvement projects that would enhance roosting and foraging habitats. For example, the eradication of weed species may benefit the Townsend's big-eared bat, which forages preferentially in association with native plants. Both the Townsend's big-eared bat and fringed myotis may benefit from riparian revegetation projects.

Because the BTC Project is not expected to greatly affect densities of arthropods, nor significantly affect the availability of foraging and roosting habitat, the Project is not expected to result in substantial adverse indirect effects to FSS bat species in the BTC SUP area.

**Migratory Birds:** The Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S.C. §§703-712) makes it illegal for anyone to take any migratory bird, or their parts, nests, or eggs, without a valid permit issued by the USFWS. Within the National Forests, conservation of migratory birds focuses on providing a diversity of habitat conditions at multiple spatial scales and ensuring that bird conservation is addressed when planning for land management activities

Project-related activities could result in disturbance to migratory birds, particularly during the nesting season. Pre-construction surveys for nesting migratory birds and FSS raptors will be conducted within ¼ mile of construction activities initiated during the breeding season throughout the life of the Special Use Permit, and protective measures consistent with the Forest Plan Direction (USDS, 2017) will be implemented for any active FSS raptor or migratory bird nests identified. Construction of the Small Falls Trail through the California spotted owl PAC located immediately adjacent to the project site will not be subject to LOPs during the spotted owl nesting season, March 1 to August 31, unless nest surveys find that the PAC is being used for nesting by migratory bird, spotted owls or other FSS raptors. With the implementation of nest surveys and protective measures, construction activities related to the project have the potential to disturb migratory birds, but migratory birds would not be at risk of injury or mortality.

Mitigation Measures BIO-6 through BIO-8 would reduce potentially significant terrestrial wildlife impacts to less than significant.

**b) Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?**

See Subsection 4a above.



**c) Would the project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?**

A delineation of potential jurisdictional waters was prepared for the SUP area (Live Oak Associates, 2018). Areas mapped within the South Fork Tuolumne River (1.2 acres) and the perennial wetland channel of Thimbleberry Creek (0.05 acre) using the ordinary high water mark would be considered Tributary Waters (1.25 acres total)

Two seasonal wetland channels totaling approximately 0.15 acre were identified within the study area that met the three technical criteria of jurisdictional wetlands. These two channels were:

- a drainage north of Hardin Flat Road crossing through a culvert toward the Camp; and
- a drainage north of Hardin Flat Road starting near the archery range and running west of the leach field.

The potential jurisdictional waters mapped on the site are either part of the South Fork Tuolumne River itself, or Thimbleberry Creek that is directly connected to the river. The Tuolumne River is a tributary of the San Joaquin River, which is considered a traditional navigable water. Because all the delineated waters of the SUP area eventually drain into a traditional navigable water, they appear to meet the criteria of a water of the United States.

The project would be required to obtain Section 404 Nationwide Permit from the U.S. Army Corps of Engineers prior to the construction of the proposed pedestrian/utility bridge. The Project does not include any direct removal, filling, hydrological interruption or other measures that would have a substantial adverse effect on federally protected wetlands.

**d) Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?**

Hatchery rainbow and brown trout are known to be present within the South Fork Tuolumne River, however hatchery rainbow trout would have interbred with any native trout that may have once been present, and brown trout are a non-native species. Natural barrier downstream in the form of waterfalls, particularly in the Rainbow Pools area, would prevent any spawning migrations from the main stem Tuolumne River from reaching Camp. Therefore, the Project does not substantially interfere with the movement of any native resident or migratory fish. See **Subsection 4a** above regarding other wildlife species.

**e) Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?**

BTC is located in SNF and subject to Forest Service requirements regarding wildlife and sensitive plants. The Forest Plan Direction includes goals and strategies for addressing invasive plants (p. 48). Mitigation Measures BIO-9 would reduce potentially significant impact from invasive plants to less than significant.

**f) Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?**

BTC is within the SNF and the site is not within the boundaries of any local, regional or State conservation plans See subsections 4a – 4e above.

### **Mitigation Measures**

#### ***Aquatic Wildlife***

- BIO-1** Conduct a pre-construction survey to identify if the western pond turtle are present within the construction areas.
- BIO-2** BTC project construction workers shall be trained regarding the western pond turtle, including identification, habitat requirements, and the importance of minimizing physical disturbance to individuals during construction.
- BIO-3** Major site grading and underground utility construction activities shall be completed during the dry season to minimize risk of harming or displacing overwintering turtles.
- BIO-4** If western pond turtles are discovered in the immediate vicinity of construction activity, construction activity shall cease and a qualified biologist will relocate the turtle to suitable habitat outside of the BTC Project area.

#### ***Sensitive Plants***

- BIO-5** Conduct a pre-construction plant survey the spring prior to Project construction. Flag and avoid new occurrences of sensitive plants. Notify the Groveland Ranger District Botanist to determine course of action.

#### ***Terrestrial Wildlife***

- BIO-6** Conduct pre-construction nest surveys for migratory birds, California spotted owls, and northern goshawks within ¼ mile of construction activities implemented during the breeding season (February 15 to September 15). If active nests are discovered, protective measures would be implemented in consultation with a USFS biologist.
- BIO-7** Pre-activity surveys roosting bats would be conducted at all suitable roost trees or structures to be removed by project activities. If any FSS bat species are discovered during the surveys, nest and roost trees would be protected unless the trees pose an eminent safety concern.
- BIO-8** If any Forest Service Sensitive (FSS) or Federal-listed terrestrial wildlife species are discovered within the BTC project site area prior to or during ground disturbance and construction activities, such activities shall cease and a USFS biologist shall be contacted for recommendations as to how to proceed.

#### ***Invasive Plants***

- BIO-9** Follow applicable FSM Manual 2080 Noxious Weed Management related to construction activities to include, but not be limited to:
- All vehicles and equipment that go off road must be free of non-native soil, mud (wet or dried), seeds, vegetative matter or other debris that could contain seeds in order to prevent new infestations of noxious weeds in the project area. Dust or very light dirt, which would not contain weed seed, is not a concern.

- Flag and avoid noxious weed populations if present. In places where noxious weeds cover large areas, mechanical treatments can be done within sites, but equipment must be cleaned before leaving the area.
- Do not stage equipment, material or personnel in areas with noxious weed infestations.
- After using equipment in infested areas, clean equipment so that it is free of soil, seeds, vegetative matter or other debris prior to being moved off site.
- Use certified weed-free mulches where available, mulches with low risk of weed introduction where certified weed-free is not available, and certified weed-free seed mixes. Seed mixes must conform to the Region 5 Policy on the Use of Native Plant Material in Restoration or Revegetation Projects.
- Where soil stabilization is needed, use crushed rock, drain rock, riprap and soil fill obtained from weed-free sources.
- Treat invasive plants and other weeds using manual (hand or mechanical) methods only.

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- United States Department of Agriculture, Stanislaus National Forest. 2017. Forest Plan Direction - Stanislaus National Forest, Sonora, CA.

|                                                                                                               | <u>Potentially<br/>Significant<br/>Impact</u> | <u>Potentially<br/>Significant<br/>Unless<br/>Mitigation<br/>Incorporated</u> | <u>Less Than<br/>Significant<br/>Impact</u> | <u>No<br/>Impact</u>                |
|---------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------------|---------------------------------------------|-------------------------------------|
| <b>5. CULTURAL RESOURCES.</b> Would the project:                                                              |                                               |                                                                               |                                             |                                     |
| a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?    | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5? | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |
| c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?       | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| d) Disturb any human remains, including those interred outside of formal cemeteries?                          | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |

**Environmental Setting**

Prior to the Rim Fire, BTC had been in continuous operation for 90 years. In 2007, an evaluation of the Camp for eligibility in the National Register of Historic Places was conducted (*Groveland Ranger District, Stanislaus National Forest* 2007). The Stanislaus National Forest determined BTC was not eligible for inclusion in the National Register because it lacks integrity to its period of significance (USDA 2001). The California State Historic Preservation Officer, following the established protocol concurred with that determination (State of California 2015).

The Hardin Flat area is representative of a deep and rich record of traditional cultural heritage. Pre-Rim fire, the entire BTC permit area was surveyed to current standards (personal communication, Kathy Strain, 2011). In 2014, the area was again surveyed for the Forest Service to update site records for sites impacted by the Rim Fire and include documentation of additional areas around BTC. After tribal consultation (Tuolumne Me-Wuk Tribal Council 2015), the Stanislaus National Forest Supervisor issued a directive that avoidance and protection of archaeological sites would be required and that any existing BTC facilities within identified archaeological areas would be removed by hand thus avoiding any ground disturbance.

**Impact Discussion**

A brief discussion of each environmental issue included under Section 5 is presented below.

**a) Would the project cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?**

The Office of Historic Preservation determined Berkeley Tuolumne Camp was not eligible for inclusion on the National Register of Historic Places. Consequently the removal of some buildings damaged due to the Rim Fire and the repair of other damaged buildings does not represent a significant impact (State of California 2007). Mitigation Measure CUL-1 is recommended to avoid impacts to cultural resources.

**b) Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?**

Three recorded archaeological resource sites are located within the BTC SUP area. With implementation of Mitigation Measure CUL-2 and Mitigation Measure CUL-3, impacts to these archaeological resources would be avoided as determined by the Office of Historic Preservation (State of California 2015).

**c) Would the project directly or indirectly destroy a unique paleontological resource or site or unique geologic formation?**

There are no paleontological resources known to be present on the BTC Project site.

**d) Would the project disturb any human remains, including those interred outside of formal cemeteries?**

There are no human remains known to be present on the BTC Project site.

### Mitigation Measures

**CUL-1** Remove specific existing structures to protect sensitive resources.

**CUL-2** Cultural resources shall be protected through application of Standard Protection Measures as determined by Programmatic Agreement Among the USDA, Forest Service, Pacific Southwest Region (Region 5), California State Historic Preservation Officer, Nevada State Historic Preservation Officer and the Advisor Council on Historic Preservation Regarding the Process for Compliance with Section 106 of the National Historic Preservation Act for Management of Historic Properties by the National Forests of the Pacific Southwest Region (Regional PA), signed February 2013. In addition:

- Natural plant succession will be allowed to occur within cultural resource site boundaries.
- Notify the Forest Service cultural resource specialist if a new cultural resource site is discovered during project implementation and cease all activities within 150 feet of the resource until consultations are completed.

**CUL-3** Buck and pole fencing shall be installed to protect cultural resources. Fencing shall be constructed by hand with no excavation.

### References

State of California. 2007. *Inadvertent Effect to Berkeley Tuolumne Camp, Groveland Ranger District, Stanislaus National Forest, California*. Letter dated October 1, 2007.

State of California. 2015. *Determination of Eligibility for FS-05-16-51-1894, FS-05-16-54-1896 and FS-05-16-54-1895*. Letter dated September 21, 2015.

Groveland Ranger District, Stanislaus National Forest. 2007. *Historic Structure Report and National Register Evaluation for Berkeley Tuolumne Camp, Tuolumne County, California, Cultural Resource Management Report No. 05-16-4276*. Prepared for City of Berkeley. Prepared by Foothill Resources, Ltd. July 2007.

Sierra Valley Cultural Planning, 2018. *Heritage Resource Memorandum. City of Berkeley Tuolumne Camp Permit (46690)*

Strain, Kathy. 2017. Email dated November 20, 2017.

Tuolumne Me-Wuk Tribal Council. Letter dated October 28, 2015.

USDA. 2001. *Programmatic Agreement among the U.S.D.A. Forest Service, Pacific Southwest Region, California State Historic Preservation Officer, and Advisory Council on Historic Preservation Regarding the Identification, Evaluation, and Treatment of Historic Properties Managed by the National Forests of the Sierra Nevada, California* (Sierra PA). August 24, 2001.

United States Department of Agriculture, Stanislaus National Forest. 2017. Forest Plan Direction - Stanislaus National Forest, Sonora, CA.

|                                                                                                                                                                                                                                                                                        | <u>Potentially<br/>Significant<br/>Impact</u> | <u>Potentially<br/>Significant<br/>Unless<br/>Mitigation<br/>Incorporated</u> | <u>Less Than<br/>Significant<br/>Impact</u> | <u>No<br/>Impact</u>                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------------|---------------------------------------------|-------------------------------------|
| <b>6. GEOLOGY AND SOILS.</b> Would the project:                                                                                                                                                                                                                                        |                                               |                                                                               |                                             |                                     |
| a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:                                                                                                                                                       |                                               |                                                                               |                                             |                                     |
| i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |
| ii) Strong seismic ground shaking?                                                                                                                                                                                                                                                     | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |
| iii) Seismic-related ground failure, including liquefaction?                                                                                                                                                                                                                           | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |
| iv) Landslides?                                                                                                                                                                                                                                                                        | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |
| b) Result in substantial soil erosion or the loss of topsoil?                                                                                                                                                                                                                          | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |
| c) Be located on a geologic unit of soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?                                                     | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |
| d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?                                                                                                                                       | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |
| e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?                                                                                                     | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |

**Environmental Setting**

Tuolumne County is located primarily within the Sierra Nevada geomorphic province, with less than ten percent of the western boundary creeping into the Great Valley province. The Sierra is a tilted fault block nearly 400 miles long. Its east face is a high rugged multiple scarp, contrasting with the gentle western slope that disappears under the sediments of the Great Valley to the west. The topography displays a wide range of landforms ranging from vertical cliffs to gently undulating plains. The County is located to the east of the Foothills fault system – a complex, braided system of individual fault segments that extends for approximately 200 miles from Mariposa in the south to Lake Alamanor in the north. The BTC SUP area is located in the southeastern part of Tuolumne County. Historically, earthquake activity in Tuolumne County is substantially below the California State average (Tuolumne County 2013)

**Impact Discussion**

With implementation of Mitigation Measure GEO-1, potential seismic hazards and unstable soils would be reduced to less than significant. A brief discussion of each environmental issue included under Section 6 is presented below.

- a) **Would the project expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: i) fault rupture, ii) strong shaking, iii) seismic-related ground failure or iv) landslides.**

While the potential for earthquake activity at the BTC site is probably low, there is the potential for seismic activity which could cause human injury or damage to structures and infrastructure facilities at the Camp. This is a potentially significant impact, but with implementation of Mitigation Measure GEO-1, potential impacts would be less than significant.

- b) **Would the project result in substantial soil erosion or the loss of topsoil?**

There is the potential for soil erosion during construction activities, but with implementation of **Mitigation Measure GEO-2**, in combination with Mitigation Measures HYDRO-5 – 8, soil erosion would be less than significant.

- c) **Would the project be located on a geologic unit of soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?**

The soils of the entire BTC permit area have been identified by the USDA Natural Resources Conservation Service as Holland family, deep/moderately deep complex. This soil type occurs on slopes between five percent and 35 percent gradients. While the soil is well drained, its runoff classification is considered high. Some mass instability would exist, especially on slopes of over 50 percent (Blair, Church and Flynn 2017). The possibility of soil instability at the Project site is considered a significant impact, but with implementation of Mitigation Measure GEO-1, potential soil instability impacts would be less than significant.

- d) **Would the project be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?**

See **Subsection 6c** above. With implementation of Mitigation Measure GEO-1, potential risks associated with expansive soil, if present, would be less than significant.

- e) **Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?**

The soils within the Camp leach field have effectively supported the Camp operations in the past. Reconstruction of the Project would require certification of an on-site sewage treatment and disposal system pursuant to Tuolumne County Code Section 13.08.270A, which would demonstrate that the soils are capable of adequately supporting the proposed use of septic tanks and leach field via new percolation tests and soil profiles, system design plans and specifications (plot plan, grading plan, description of



groundwater and soils, description of monitoring devices, system operation and function), and site evaluation and testing.

### Mitigation Measures

- GEO-1** Detailed geotechnical investigations shall be performed prior to the design of all buildings and the pedestrian/utility bridge. Buildings and bridges shall be designed to withstand seismic and soil loads consistent with California Building Code.
- GEO-2** To minimize soil erosion during construction activities, follow FSM 2550 Soil Management R5 Supplement (USDA 2012) and Soil Management Practices identified in the Forest Plan Direction (USDA 2017, p. 57-58).

### References

- Blair Church and Flynn, Consulting Engineers and 2M Associates. 2017. *Watershed Management Report, Berkeley Tuolumne Camp (Permit 46690) Groveland Ranger District, Stanislaus National Forest*. October 7, 2017.
- Tuolumne County. 2013. *General Plan Update EIR, Safety Element*. Available on the County website at: <https://www.tuolumnecounty.ca.gov/889/General-Plan-Update>.
- Tuolumne County. 2009. Guidelines for Design and Evaluation of Special Design On-Site Sewage Treatment and Disposal Systems. Available on the County website at: <https://www.tuolumnecounty.ca.gov/DocumentCenter/View/934>
- United States Department of Agriculture, Stanislaus National Forest. 2017. Forest Plan Direction - Stanislaus National Forest, Sonora, CA.
- United States Department of Agriculture. Forest Service Manual Pacific Southwest Region (R5) Vallejo, California. FSM 2500 - Watershed And Air Management, Chapter 2550 - Soil Management.

|                                                                                                                                  | <u>Potentially<br/>Significant<br/>Impact</u> | <u>Potentially<br/>Significant<br/>Unless<br/>Mitigation<br/>Incorporated</u> | <u>Less Than<br/>Significant<br/>Impact</u> | <u>No<br/>Impact</u>     |
|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------------|---------------------------------------------|--------------------------|
| <b>7. GREENHOUSE GAS EMISSIONS.</b> Would the project:                                                                           |                                               |                                                                               |                                             |                          |
| a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?      | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input checked="" type="checkbox"/>         | <input type="checkbox"/> |
| b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases? | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input checked="" type="checkbox"/>         | <input type="checkbox"/> |

**Environmental Setting**

Greenhouse gases (GHGs) are atmospheric gases that capture and retain a portion of the heat radiated from the earth after it has been heated by the sun. The primary GHGs are carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and nitrous oxide (N<sub>2</sub>O), ozone, and water vapor. While GHGs are natural components of the atmosphere, CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O are also emitted from human activities and their accumulation in the atmosphere over the past 200 years has substantially increased their concentrations. This accumulation of GHGs has been implicated as the driving force behind global climate change.

Human emissions of CO<sub>2</sub> are largely by-products of fossil fuel combustion, whereas CH<sub>4</sub> results from off-gassing associated with organic decay processes in agriculture, landfills, etc. Other GHGs, including hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, are generated by certain industrial processes. The global warming potential of GHGs are typically reported in comparison to that of CO<sub>2</sub>, the most common and influential GHG, in units of “carbon dioxide-equivalents” (CO<sub>2</sub>e).

There is international scientific consensus that human-caused increases in GHGs have and will continue to contribute to global warming. Potential global warming impacts in California may include, but are not limited to, loss in snow pack, sea level rise, more extreme heat days per year, more high ozone days, more large forest fires, and more drought years. Secondary effects are likely to include a global rise in sea level, impacts to agriculture, changes in disease vectors, and changes in habitat and biodiversity. (CCCC, 2012)

The California Air Resources Board (CARB) estimated that in 2011 California produced 448 million gross metric tons of CO<sub>2</sub>e, or about 535 million U.S. tons. CARB found that transportation is the source of 37.6 percent of the state’s GHG emissions, followed by industrial sources at 20.8 percent and electricity generation (both in-state and out-of-state) at 19.3 percent. Commercial and residential fuel use (primarily for heating) accounted for 10.1 percent of GHG emissions. (CARB, 2014a)

**Regulatory Setting**

Assembly Bill 32 (AB 32 - Núñez, Chapter 488, Statutes of 2006), the California Global Warming Solutions Act, requires the CARB to lower State GHG emissions to 1990 levels by 2020—a 25 percent reduction statewide with mandatory caps for significant GHG emission sources. AB 32 directed CARB to develop discrete early actions to reduce GHG while preparing the Climate Change Scoping Plan to identify how best to reach the 2020 goal. (CARB, Assembly Bill 32 Overview)

Statewide strategies to reduce GHG emissions to attain the 2020 goal include the Low Carbon Fuel Standard (LCFS), the California Appliance Energy Efficiency regulations, the California Renewable Energy Portfolio standard, changes in the motor vehicle corporate average fuel economy (CAFE) standards, and other early action measures that would ensure the state is on target to achieve the GHG emissions reduction goals of AB 32.

In an effort to make further progress in attaining the longer-range GHG emissions reductions required by AB 32, Governor Brown identified in his January 2015 inaugural address an additional goal (reducing GHG emissions to 40 percent below 1990 levels by 2030) to be attained by implementing several key climate change strategy “pillars:” (1) reducing present petroleum use in cars and trucks by up to 50 percent; (2) increasing from one-third to 50 percent the share of California’s electricity derived from renewable sources; (3) doubling the energy efficiency savings achieved at existing buildings and making heating fuels cleaner; (4) reducing the release of methane, black carbon, and other short-lived GHGs; (5) managing farm and rangelands, forests and wetlands to more efficiently store carbon; and (6) periodically updating the State's climate adaptation strategy.

The Tuolumne County Air Pollution Control District has no CEQA analysis methodology nor significance criteria for assessing development project GHG impacts. Other California Air Districts recommend quantification of GHG from project source and then rely either on set limits to project operational GHG emissions (e.g., the Sacramento Metropolitan Air Quality Management District has set its significance threshold at 1,100 metric tons for construction and operation; the Bay Area Air Quality Management District has set the same threshold for operational emissions only) or require minimum quantitative reductions of project GHG emissions from baseline levels (e.g., the San Joaquin Valley Air Pollution Control District requires at least a 29 percent reduction in operational emissions).

## Impact Discussion

The proposed reconstruction of BTC much as it was prior to the Rim Fire would have no significant temporary or permanent impacts to GHG emissions nor conflict with any GHG reduction plans. A brief discussion of each environmental issue included under Section 7 is presented below.

### **a) Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?**

The California Emissions Estimator Model (CalEEMod, Version 2016.3.2) was used to quantify GHG emissions associated with Project construction activities and Project operation. Applying this model to the Project, its total construction GHG emissions would be 314.7 metric tons of CO<sub>2e</sub> and its annual emissions in the first year of operation would be 82.6 metric tons of CO<sub>2e</sub>. Both Project construction and operational GHG emissions are well below thresholds adopted by other Air Districts, thus, Project GHG emissions impacts are less than significant.

**b) Would the project conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?**

GHG emissions from the reconstructed BTC would not exceed its pre-Rim Fire level. Thus, the Project would not conflict with the goals of AB 32 or any other State climate change prevention or adaptation strategies, a less than significant impact.

**Mitigation Measures**

None required.

**References**

CCCC (California Climate Change Center). 2012. *Our Changing Climate 2012 Vulnerability & Adaptation to the Increasing Risks from Climate Change in California, A Summary Report on the Third Assessment from the California Climate Change Center*. <http://uc-cicee.org/downloads/Our%20Changing%20Climate%202012.pdf>

CAPCOA (California Air Pollution Control Officers Association). 2013. California Emissions Estimator Model [CalEEMod], Version 2016.3.2. <http://www.calemod.com/>

CARB (California Air Resources Board). 2014a. *California Greenhouse Gas Emission Inventory: 2000-2012*. Available online at: [http://www.arb.ca.gov/cc/inventory/pubs/reports/ghg\\_inventory\\_00-12\\_report.pdf](http://www.arb.ca.gov/cc/inventory/pubs/reports/ghg_inventory_00-12_report.pdf)

CARB. Assembly Bill 32 Overview <http://www.arb.ca.gov/cc/ab32/ab32.htm>

CARB. 2014b. *First Update to the Climate Change Scoping Plan* [http://www.arb.ca.gov/cc/scopingplan/2013\\_update/first\\_update\\_climate\\_change\\_scoping\\_plan.pdf](http://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf)

|                                                                                                                                                                                                                                                                  | Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact        | No Impact                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------------------------------|-------------------------------------|-------------------------------------|
| <b>8. HAZARDS AND HAZARDOUS MATERIALS.</b> Would the project:                                                                                                                                                                                                    |                                |                                                        |                                     |                                     |
| a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?                                                                                                                          | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?                                                                  | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?                                                                                                  | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?                                   | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?                                                                                                      | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?                                                                                                                                        | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?                                             | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

### Environmental Setting

In 1986 a 500-gallon underground storage tank (UST) was removed from BTC. The Central Valley Regional Water Quality Control Board (CVRWQCB) issued a letter requesting further delineation and groundwater sampling in response to hydrocarbon impacted soil left in place during UST removal. Residual soil in the footprint of the UST was excavated in November, 2013 and water samples were collected from the Tuolumne River and an on-site upgradient well. The results from these analyses indicated no impacts to soil or surface water and the detection of benzene at a concentration of 0.92 µg/l in the groundwater sample from the upgradient well. CVRWQCB requested re-sampling of groundwater before issuing closure for the BTC site. In response, additional groundwater sampling was undertaken and the results indicated all constituents are below laboratory reporting limits (Geosyntec consultants 2014). The CVRWQCB issued a No Further Action Required for BTC on September 11, 2015 (CVRWQCB 2015).

## Regulatory Setting

The California Division of Occupational Safety (Cal/OSHA) regulates workplace safety. The California Department of Toxic Substances Control (DTSC) regulates hazardous material remediation if required.

## Impact Discussion

The BTC project would not present a risk regarding the exposure of hazards or hazardous materials to BTC camp staff, visitors, or the environment. To comply with Cal/OSHA standards for hazard material training/information, a supplementary training program is conducted at the beginning of each Camp season for all staff that may use hazardous chemicals specific to the Camp. Hazardous materials are stored in designated locations that are signed and lockable. A brief discussion of each environmental issue included under Section 8 is presented below.

**a) Would the project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?**

All transport, use, or disposal of hazardous materials associated with the Camp operations will be conform to Cal/OSHA regulations. The Project will not include the installation of any underground fuel storage tanks. Above-ground propane (liquid petroleum gas) tanks would support Camp operations (kitchen, restrooms, laundries, hot water, etc). These would be installed per County regulations.

**b) Would the project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?**

The Project will install above-ground propane tanks. These tanks will be constructed and inspected by Tuolumne County Environmental Health as the Certified Unified Program Agency (CUPA) for all areas of Tuolumne County.

**c) Would the project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?**

No. BTC is more than one-quarter mile from the nearest school.

**d) Would the project be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?**

The Project site is not included on the Department of Toxic Substance Control's site cleanup list as per Government Code Section 65962.5 (Department of Toxic Substance Control 2018) and is not a significant hazard to public health or the environment.

**e) Would the project be located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?**

BTC is not located within two miles of a public airport (Google Earth 2018).

**f) Would the project be within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?**

BTC is not located within two miles of a private airstrip (Google Earth 2018).

**g) Would the project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?**

The City of Berkeley prepared the *Berkeley Tuolumne Camp Operating Plan* (City of Berkeley 2013) to address emergency response and evacuation. It was successfully applied during the Rim Fire. This plan will be updated to reflect any changes in Camp layout and facilities for the proposed Project. This plan identifies emergency information and an action plan outlining Camp evacuation in the event of floods or wildfire.

**h) Would the project expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?**

The proposed Project is located in the SNF and could be exposed to wildland fires as was evident during the 2013 Rim Fire when most of the Camp and the surrounding forest burned. The reconstructed BTC will incorporate upgraded facilities reflecting current State code. Additionally, the Camp will implement an updated evacuation plan. See Subsection 8g above.

### **Mitigation Measures**

None required.

### **References**

City of Berkeley. 2013. *Berkeley Tuolumne Camp Operating Plan*.

California Department of Toxic Substance Control. 2015. *DTSC's Hazardous Waste and Substances Site List (Cortese List)*. [www.dtsc.ca.gov/SiteCleanup/Cortese\\_List.cfm](http://www.dtsc.ca.gov/SiteCleanup/Cortese_List.cfm).

Google Earth. 2018. Viewed on January 26, 2018.

|                                                                                                                                                                                                                                                                                                                                                                                         | Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact        | No Impact                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------------------------------|-------------------------------------|-------------------------------------|
| <b>9. HYDROLOGY AND WATER QUALITY.</b>                                                                                                                                                                                                                                                                                                                                                  |                                |                                                        |                                     |                                     |
| Would the project:                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                        |                                     |                                     |
| a) Violate any water quality standards or waste discharge requirements?                                                                                                                                                                                                                                                                                                                 | <input type="checkbox"/>       | <input checked="" type="checkbox"/>                    | <input type="checkbox"/>            | <input type="checkbox"/>            |
| b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted?) | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner, which would result in substantial erosion or siltation on- or off-site?                                                                                                                                                     | <input type="checkbox"/>       | <input checked="" type="checkbox"/>                    | <input type="checkbox"/>            | <input type="checkbox"/>            |
| d) Substantially alter the existing drainage pattern of the site area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner, which would result in flooding on- or off-site?                                                                                                                 | <input type="checkbox"/>       | <input checked="" type="checkbox"/>                    | <input type="checkbox"/>            | <input type="checkbox"/>            |
| e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?                                                                                                                                                                                                   | <input type="checkbox"/>       | <input checked="" type="checkbox"/>                    | <input type="checkbox"/>            | <input type="checkbox"/>            |
| f) Otherwise substantially degrade water quality?                                                                                                                                                                                                                                                                                                                                       | <input type="checkbox"/>       | <input checked="" type="checkbox"/>                    | <input type="checkbox"/>            | <input type="checkbox"/>            |
| g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?                                                                                                                                                                                                                    | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?                                                                                                                                                                                                                                                                                     | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?                                                                                                                                                                                                                      | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| j) Inundation by seiche, tsunami, or mudflow?                                                                                                                                                                                                                                                                                                                                           | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

### Environmental Setting

The Environmental Setting presented below represents a summary of the *Watershed Management Report, Berkeley Tuolumne Camp (Permit 46690) Groveland Ranger District, Stanislaus National Forest* (Blair Church and Flynn, and 2M Associates 2017).

### Berkeley Tuolumne Camp

Post Rim Fire, remaining camp facilities included the following:

- 18 permanent structures;



- two concrete weirs, concrete foundations and walls associated with the Dining Hall that define a portion of the 100-year flood plain
- concrete foundations for two bridge structures that crossed from each river shoreline to the island in the river along the South Fork Tuolumne River;
- drainage culverts under Hardin Flat Road and the Camp driveway; and
- a culvert under the main Camp access route for Thimbleberry Creek.

After the Rim Fire, vegetation clearance commenced including:

- In 2013, PG&E cleared trees along their distribution line within the vicinity of the Camp;
- In 2014 a hazard logging operation was conducted removing all trees within an approximately four-acre zone around what was the Central Camp area along the south side of the river.

Since the Rim Fire, vegetation has been recovering naturally. By spring 2015 there was essentially complete herbaceous ground cover with naturally regenerating black oak, Douglas fir, white alder and willows.

## **Watershed**

The South Fork Tuolumne River watershed above BTC is the principal watershed of interest and is defined as a spatial hierarchy of eight nesting watershed size classes ranging from very large (greater than 250,000 acres) to very small (less than 2,000 acres). The South Fork Tuolumne River comprises 57,855 acres, classifying it as a Hydrologic Unit Code (HUC) Level 6. The South Fork Tuolumne watershed starts in the high country of Yosemite National Park above elevation 8,500 feet and terminates at the confluence of the South Fork with the Middlefork Tuolumne River approximately 6.1 miles downstream of BTC. Given the large scale of the Rim Fire, the SNF hydrologists identified HUC Level 6 as the most appropriate scale for watershed description and analysis of the effects of the Rim Fire Recovery Project.

The United States Geological Survey (USGS) has maintained a stream flow gauge near Rainbow Pool on the South Fork Tuolumne River just upstream of its confluence with the Middlefork beginning in 1923 until 1996 when the gauging was discontinued. Beginning in 1997, the City of San Francisco has maintained the gauge. The statistical analysis of the stream flow gauging for the South Fork Tuolumne River indicates that the mean annual flow for the river is 96.1 cubic feet per second (cfs). Daily mean flow rates range from a high of 6,960 cfs to a low of 0.4 cfs. Stream gauge information indicates that the South Fork Tuolumne River conveys water all year long.

There are two small local watersheds that drain into the South Fork Tuolumne River at the BTC site:

1. Thimbleberry Creek, a perennial, spring-fed stream from the south. The watershed area is approximately 92 acres. The calculated 100-year discharge rate from the watershed is 60 cfs.
2. An unnamed intermittent drainage starting from Sawmill Mountain, herein referred to as “the Northside Drainage”. The watershed area is approximately 136 acres. The calculated 100-year discharge rate from the watershed is 77 cfs.

The South Fork Tuolumne River and the BTC SUP area are within the Mediterranean climate belt. The primary tree types consist of sugar and ponderosa pines mixed with black oak and alder. The slopes of the South Fork Tuolumne River in the vicinity of the camp average 0.03 vertical feet per horizontal foot. BTC is located upstream from the USGS stream gauge, but is sufficiently close to the gauge such that the flow rates measured at the gauge station are highly indicative of the flow rates at BTC. The average annual precipitation at BTC is estimated to be 48 inches however the watershed has extensive areas above snowline, meaning that rainfall is not the principal generator of runoff from the watershed.

**Regulatory Setting**

As a Federal agency, the Forest Service is bound by Federal laws, Executive orders, and Department of Agriculture directives, which are the basis for Forest Service programs and operations. The Stanislaus National Forest expresses these regulations, orders and directives in the Forest Plan Direction (USDA, 2017). The BTC project must adhere and implement the Forest Plan Direction (FPD) as well as State laws, regulations, and codes governing development activities. The FPD includes a general framework or understanding for managing the forest resources. To meet the goals and achieve the objectives set forth in the FPD, ‘Management Practices’ and ‘Forest Wide Standards and Guidelines’ are established. Protection of water quantity and quality is an important part of the mission of the Forest Service (USDA 2007). Management activities on national forest lands must be planned and implemented to protect the hydrologic functions of forest watersheds, including the volume, timing, and quality of stream flow. Below are the relevant regulations for BTC from both Federal and State requirements as well as the standards and guidelines outlined in the FPD pertaining to the camp:

***Federal***

*Forest Plan Direction*

Forest Plan Direction (USDA, 2017, p. 61 ) provides standards and guidelines for managing water quality and quantity forest-wide. Standards and guidelines applicable to BTC are listed in Table 8.

**TABLE 8: FOREST PLAN DIRECTION (USDA, 2017)**

| Practices (p. 61)               | General Direction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Standards and Guidelines (Desired Conditions)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Water Quality Management (18-A) | <ol style="list-style-type: none"> <li>1. Comply with all applicable Federal and State water quality standards. Prevent or minimize as much as possible any water quality impacts which may be caused by Forest management activities. Achieve the goals for preventing or minimizing water pollution as stated in the Federal Clean Water Act. Implement water quality Best Management Practices (BMPs) as specified in the Management Agency Agreement with the California Water Resources Control Board for protection of non-point water pollution sources.</li> <li>2. Comply with applicable provisions of the Water Quality Control Plan (Basin Plan) of the California Central Valley Regional Water Control Board</li> </ol> | <ol style="list-style-type: none"> <li>1. Implement water quality Best Management Practices (BMPs) as needed for all Forest management activities. BMPs are a system of nearly 100 practices designed to minimize or prevent water pollution from Forest management activities. Reference Appendix A Table A-2 for a discussion and listing of the water quality BMPs applicable to the project alternatives.</li> <li>2. Monitor the implementation and effectiveness of BMPs in selected areas to determine if they are being carried out and if they are accomplishing their objectives.</li> </ol> |

|                                              |                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Water Quantity Management (18-B)             | Support all valid uses of water from the National Forest. Insure that such uses are carried out commensurate with Federal and State laws and regulations                        | Follow all Federal and State regulatory practices required in responding to proposals to develop the water resource                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Watershed Maintenance and Improvement (18-D) | Maintain or improve watershed condition to provide stewardship of water and soil resources. Survey Forest watersheds and restore degraded areas to improve watershed condition. | Implement the following watershed recovery practices following major wildfires:<br>1. Restore ground cover as soon as possible when necessary to reduce flood flows to protect life and property, to maintain soil productivity and/or to minimize stream sedimentation and cumulative watershed effects.<br>2. Conduct reforestation activities in a manner which reduces the potential for cumulative watershed effects, such as dispersing site preparation adequately over time and space and/or using techniques which minimize land disturbance. |

### *Riparian Conservation Areas*

Riparian Conservation Areas (RCAs) are corridors along stream channels and surrounding meadows, springs and other wetland areas that provide habitat for plants that thrive on a high water table. RCA's are defined in the Forest Plan Direction (USDA, 2017) as follows:

- Perennial Streams. 300 feet on each side of the stream, measured from the bank full edge of the stream.
- Seasonally Flowing Streams (includes intermittent and ephemeral streams): 150 feet on each side

The majority of proposed facilities and use areas related to the construction and operations of BTC are within the RCA of either the South Fork Tuolumne River, Thimbleberry Creek, or the Northside Drainage. Therefore it is assumed for the purposes of this analysis that all of the BTC permit area is within a RCA.

### *Management Areas*

The Forest Plan Direction (USDA, 2017) identifies the existing BTC permit area as a Developed Recreation Site. Other forest-wide standards and guidelines (pp. 31-61) and management area direction that apply within or directly adjacent to this project include: Scenic Corridor with Retention Visual Quality Objective (p. 149); and, Developed Recreation Sites with Roded Natural Recreation Opportunity Spectrum Class (pp. 159-174). Land Allocations with associated management intent and objectives that also apply within or directly adjacent to this project include: CA Spotted Owl Protected Activity Centers (pp. 179-182); CA Spotted Owl Home Range Core Area (p. 184); Wildland Urban Intermix (pp. 185-186); General Forest (p. 191); Riparian Conservation Areas (pp. 187-191); and, Wildlife Urban Intermix Defense Zone (pp. 185).

*Federal Law*

- The Clean Water Act of 1948 (as amended in 1972 and 1987) establishes as Federal policy the control of point and non-point source pollution, and assigns the states the primary responsibility for control of water pollution. Compliance with the Clean Water Act by National Forest in California is achieved under state law.
- The Regional Water Quality Management Handbook (USDA 2011) manages non-point source pollution on National Forests and relies upon implementation of prescribed regional BMPs as well as national BMPs (USDA 2012).
- Organic Administration Act of 1897 (16 U.S.C. 475) defines original National Forest purposes to improve and protect the forests; to secure favorable conditions of water flows; and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States.
- Multiple Use Sustained-Yield Act of 1960 (16 U.S.C. 528) expands National Forest purposes to include watershed, wildlife and fish, outdoor recreation, range, and timber. Renewable surface resources are to be managed for multiple use and sustained yield of the several products and services that they provide. The principles of multiple use and sustained yield include the provision that the productivity of the land shall not be impaired.
- Wild and Scenic Rivers Act of 1968 (16 U.S. C. 1271.1287; PL 90-452) requires that the Forest Service manager for nondegradation and enhancement of water quality in designated rivers on national forests.
- National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, 4331.4335, 4341.4346, 4346a-b, 4347) establishes a national policy encouraging a “productive and enjoyable harmony between humans and their environment.” All Federal agencies, including the Forest Service, are required to use a systematic interdisciplinary approach to planning and decision-making. In addition, Federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major Federal actions significantly affecting the environment.
- Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371.4374) establishes a national policy for the environment, which provides for the enhancement of environmental quality.
- Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600-1614) provides for systematic, long-range planning in managing renewable resources. The plans are based on a national assessment conducted every 10 years. The plans are updated every 5 years and submitted to Congress.
- National Forest Management Act of 1976 (16 U.S.C. 1600-1602, 1604, 1606, 1608.1614) amends the Forest and Rangeland Renewable Resources Planning Act, emphasizing interdisciplinary involvement in the preparation of land and resource management plans. The law reinforced the concept of multiple use management of Forest Service lands and added requirements for resource protection.
- The Antideficiency Act (31 U.S.C. §1341) prohibits Federal agency officials from obligating funds in advance or in excess of Congressional appropriations. As a result, a Federal agency official cannot agree to commit the federal agency to future, indefinite, or potentially unlimited financial obligations

or expenditures of funds for which there is no Congressional appropriation. All actions by the Forest Service as a Federal agency are covered by this act. However, under this handbook, implementation and monitoring of BMPs are required for funded Forest Service projects.

#### *Executive Orders*

- Executive Order 11988 Floodplain Management requires Federal agencies to avoid, to the extent possible, long- and short-term adverse impacts associated with the occupancy and modification of floodplains.
- Executive Order 11990 Protection of Wetlands to preserve and enhance natural and beneficial values of wetlands
- Executive Order 13693 Planning for Federal Sustainability in the Next Decade to manage stormwater and preserve and/or restore natural site hydrology.
- Executive Order 12088 of October 13, 1978 requires Federal agencies to comply with environmental laws to be consistent with requirements that apply to a private person. Compliance will be in line with authorities and responsibilities of other Federal agencies, State, interstate, and local authorities as specified and granted in each of the various environmental laws.

#### *State and Local*

- The Porter-Cologne Water Quality Control Act, as amended in 2006, is included in the California Water Code and provides for the protection of water quality by the State Water Resources Control Board and the Regional Water Quality Control Boards, which are authorized by the U.S. Environmental Protection Agency to enforce the Clean Water Act in California.
- State of California Department of Fish and Wildlife under Fish and Game Code Section 1602 for lake and stream bed alteration agreement states “an entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream or lake...” without meeting requirements as per the California Fish and Game Code Section 1600 et. seq. The Legislature finds and declares that the protection and conservation of the fish and wildlife resource of this state are of the utmost public interest.
- The California Water Code consists of a comprehensive body of law that incorporates all State laws related to water, including water rights, water developments, and water quality. The laws related to water quality (section 13000 to 13485) apply to waters on the National Forests and are directed at protecting the beneficial uses of water.
- Tuolumne County Division of Environmental Health Code Section 13.08.270A for Certification of an on-site sewage treatment and disposal system pursuant to Tuolumne County Code Section 13.08.
- Tuolumne County Floodplain Code Section 15.24 that governs the types of facilities, means, and methods for construction with a floodplain.

## Impact Discussion

The impact assessment presented below represents a summary of the *Watershed Management Report, Berkeley Tuolumne Camp (Permit 46690) Groveland Ranger District, Stanislaus National Forest* (Blair Church and Flynn, and 2M Associates 2017).

The proposed Project may violate water quality standards, alter surface drainage patterns and place some structures within the 100-year floodplain, but with implementation of Mitigation Measures HYDRO-1 through HYDRO-8, potentially significant impacts would be less than significant. A brief discussion of each environmental issue included under Section 9 is presented below.

### a) **Would the project violate any water quality standards or waste discharge requirements?**

Construction activities have the potential to increase levels of pollution in runoff that can create violations in water quality standards, and camp operations have the potential to increase levels of pollution in runoff. Camp operations also have the potential to produce pollutants due to trash, food wastes, spills of maintenance fluids, waste products from maintenance operations, and leaks from parked vehicles.

Camp operations would employ an on-site sewage treatment system that has the potential to affect water quality of the South Fork Tuolumne River. This could be from breaks in effluent lines or from underground migration of effluent from the leach field area to the South Fork Tuolumne River. Waste water lines would be buried within Camp. All waste-water treatment facilities would be relocated above the 100-year base flood elevation (BFE) of the South Fork Tuolumne River. Effluent lines crossing the river would be attached to the proposed pedestrian bridge above the 100-year BFE of the river. The lift station servicing the leach field area would also be sited outside the 100-year BFE of the river.

Construction of the BTC would require the City to obtain coverage under the National Pollution Discharge Elimination System (NPDES) State of California General Construction Permit to discharge stormwater. In conformance with that permit, a stormwater pollution prevention plan (SWPPP) would be in place prior to the start of construction and would be implemented during construction.

Prior to operations beginning at BTC, the design and testing of the Camp's waste water disposal system will require certification from Tuolumne County.

With implementation of Mitigation Measures HYDRO 1 – 8 the Project will not violate water quality standards and waste charge requirements.

### b) **Would the project substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted?)**

There is no municipal water service at BTC. Groundwater resources outside the floodplain are inadequate to meet water demands for the Camp. BTC has traditionally drawn water directly from the South Fork Tuolumne River for its operations and would continue to do so. Consumptive water use

would be consistent with or less than (due to new more efficient water fixtures) historic water use at BTC. No reported incidents of downstream water shortages occurred during the 91-year history of BTC operations prior to the Rim Fire. Therefore it is anticipated that consumptive water use would have no direct or indirect adverse impacts on water supply.

There are no wells associated with the proposed Camp's water supply. There would be no impact on groundwater resources.

**c) Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner, which would result in substantial erosion or siltation on- or off-site?**

Construction of the BTC would not substantially alter existing surface drainage patterns. Minor drainages that previously flowed toward the Dining Hall foundation would be redirected into Thimbleberry Creek and the South Fork Tuolumne River. With implementation of Mitigation Measures HYDRO-5 – 8 to minimize erosion or siltation on or off the BTC SUP area the Project would not result in substantial erosion or siltation on or off-site.

**d) Would the project substantially alter the existing drainage pattern of the site area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner, which would result in flooding on- or off-site?**

The Project would not substantially alter existing drainage patterns. See **Subsection 9c** above.

All camper and staff parking areas would be gravel. The BTC entrance, turn-around, and service access to the Dining Hall would be pervious asphalt. The result is that construction of BTC would increase the amount of pervious surfacing over that which existed before the Rim Fire thus reducing potential of erosion or siltation on- or off-site. The reconstruction of Camp structures, in particular the Dining Hall and Recreation Hall, will restore pre-fire impervious surface to the area. Drainage from metal roofed structures will employ low-impact development principles to disperse stormwater runoff. Runoff will be direct (no gutters or collection systems) to surface/ground catchment areas individually designed for each structure.

Given the overall watershed size of the South Fork Tuolumne River, any increase in runoff due to the reconstructed buildings would not substantially increase the rate or amount of surface runoff in the River in a manner that would result in flooding on or off site.

**e) Would the project create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?**

Storm drainage facilities utilized to control, convey, and dispose of runoff from the camp would be designed for the ten-year design storm return frequency. Storms that exceed the rainfall intensities of the ten-year design storm return frequency would exceed the capacity of the storm drain system. Major

storm flow patterns would be investigated to ensure that storms that exceed the design capacity of the storm drainage facilities are safely channeled to disposal in the South Fork Tuolumne River.

### Construction

Construction activity can be a major source of sediment, dust, and trash when rainfall occurs on a construction site or runoff drains through a construction site.

The Clean Water Act and associated regulations created the National Pollution Discharge Elimination Permit System to control the quality of runoff from construction sites. The State of California Water Resources Control Board issues coverage under a General Construction Permit for the discharge or runoff from construction sites that disturb one acre or more of soil to waters of the United States. The South Fork Tuolumne River meets the definition of waters of the United States. The permit requires the preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP) and Best Management Practices (BMPs) to control the quality of the runoff by eliminating sources of pollution and/or treating runoff. BMPs, principally those from the California Water Quality Association Best Management Practices Web Portal (CASQA, web page), would be implemented during construction to reduce or eliminate the contact of these sources of pollution with runoff. The General Construction Permit requires that the Risk Level be determined for the construction project and the BMPs and runoff monitoring prescribed in the Stormwater Pollution Prevention Plan be consistent with Risk Level. The footprint of construction of the new camp would disturb soil to varying degrees. Graded areas (contouring for surface drainage, leach field, new parking areas, water tanks, etc.) would disturb approximately 4 to 5 acres of soil. Localized ground disturbance from construction of other Camp facilities (footings, routes of travel, trails, etc.) would total approximately an additional 3 acres. Therefore the construction site would require coverage under the General Construction Permit to discharge runoff from the site and the preparation and implementation of a SWPPP to control the quality of the runoff from the site. Due to the slopes, soil type, direct connection of the runoff to the South Fork Tuolumne River, and the cold spawn migratory nature of the river, it is probable that the site would be classified as Risk Level 2 or 3.

### Materials and Storm Drain Systems

Parking areas would be composed of permeable asphalt paving or gravel. Permeable asphalt paving would be used where feasible for the BTC entrance, turn-around, and service drive to the Dining Hall. Runoff reduction BMPs would be implemented to reduce runoff rates and volumes and to reduce potential for flooding within the project. These BMPs include, but are not limited to use of:

- Permeable pavements, where soil conditions are conducive to infiltration, to reduce runoff from paved areas. The use of these pavement types will be made on a case-by-case basis based on types of traffic use (light duty vehicles vs. heavier trucks and equipment), subsoil conditions, and downstream drainage facilities.
- Gravel on a geotextile fabric for parking areas.
- Infiltration trenches in lieu of drainage ditches where needed to avoid concentration of runoff and reduce erosive velocities.



- Stabilized surfaces in ditches where infiltration trenches will be ineffective.
- Slopes that distribute extreme stormwater runoff from camp drives as soon as possible to reduce the amount of concentrated runoff within infiltration ditches.

#### Revegetation

All ground areas disturbed by construction would be hydromulched. Additionally, the proposed camp revegetation plan (described on pages 9 -10 of the Project Description) ) covering approximately five acres of the SUP area would moderate surface runoff conditions.

#### Operations & Pedestrian Circulation

Operation of the camp has the potential to increase the sources of pollution in runoff due to parked vehicles, trash, and degradation of forest ground cover and understory plants in heavy traffic areas.

Erosion would occur when ground is left bare and unprotected from the erosive forces of rainfall and runoff. The cause of the unprotected ground is generally attributed to lack of vegetative cover and forest duff in those areas that experience heavy pedestrian and vehicle use to access cabins.

Delineation of travel paths with a stabilized or natural material with water bars and re-vegetation of the areas outside of the paths with native plants is proposed. Education programs for the campers were implemented prior to the Rim Fire, and would continue to be conducted to encourage use of the paths and discourage creating volunteer paths that contributes to loss of vegetation and further erosion.

Paths for cabin access and for general foot traffic throughout the camp would be clearly delineated and stabilized with a permeable material. Trail drainage would be implemented in conformance with the Forest Service trail design standards to reduce concentrating runoff in trails, which increases erosion. Water bars draining into vegetated areas would be used as a typical method for controlling runoff that concentrates in trails. Crowning trails and reconstructing trails with frequent dips and switchbacks are other means for controlling drainage on trails.

#### **f) Would the project otherwise substantially degrade water quality?**

Uses in and over creeks can be sources of pollution in creek channels. Potential pollution sources include non-naturally occurring compounds and their residues, suspended solids, and trash. The presence of these compounds and particularly their residues and trash unfortunately increases with increased human contact.

Site drainage would be directed away from facilities where activities generate trash or the use of products that could be spilled or drained such as trash bin areas, bathhouse restroom area, food preparation areas, etc Solid waste storage areas may be a significant source of pollution due to trash, residues from wet trash, and hydraulic fluid and lubricant drips from solid waste hauling vehicles. The recycling facility would include trash and other container bins that would be water tight and covered at all times. The use of bear-resistant lids on camp solid waste bins would be an effective means to ensure that lids remain closed at all times. The recycling facilities pad would be checked periodically for stains, which indicate leaking residue from wet trash, accumulated trash, or vehicle fluid leaks. Residues would be cleaned

from the slab and if discovered leaking hydraulic fluid or lubricants would be cleaned from the concrete pad and the leaking vehicle repaired. Trash would not be allowed to accumulate, but would be deposited in the solid waste bins with lids down and fastened.

Camp equipment, dry goods, furnishings, and other articles from the camping experience would not be stored within the delineated floodplain of the river or within creek channels during the winter season.

With implementation of Mitigation Measures HYDRO 1-3 and HYDRO 5-8, potential water pollution impacts associated with BTC operations will be less than significant.

**g) Would the project place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?**

No housing would be placed in a 100-year flood hazard area.

**h) Would the project place within a 100-year flood hazard area structures which would impede or redirect flood flows?**

The Project would place some structures within a 100-year floodplain, however these improvements are not expected to significantly impede or redirect flood flows. Existing weirs in the South Fork Tuolumne River would be renovated to pre-Rim Fire conditions. Otherwise, their seasonal summer ponding function that has been in effect for over 50 years will remain unchanged.

Permanent facilities to be retained or constructed within the 100-year floodplain of the South Fork Tuolumne Rivers include: (1) the repair and/or replacement of existing walls / weirs, (2) structural elements of the pedestrian bridge, (3) grading and/or new walls at the Dining Hall remnant foundation wall, (4) water intake elements, and (5) grading/ramps associated with accessible routes of travel. Structural elements of the pedestrian bridges spanning Thimbleberry Creek may be placed within the boundaries of the 100-year floodplain of Thimbleberry Creek.

Of these facilities, only structural bridge elements have the potential to impede flood flows, as all other facilities will be constructed at or very near existing grade. Post Project hydraulic modeling has determined that these facilities do not result in significant impacts to 100-year water surface elevation (Blair Church and Flynn, and 2M Associates 2017).

**i) Would the project expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?**

Based on the County Ordinance requirements, fundamental engineering design principles to be used for all structures developed within the South Fork Tuolumne River floodplain include:

- Design for structures within the floodplain would comply with Tuolumne County Floodplain ordinance standards of construction (15.24.150).
- Bridge soffits would be elevated above the water surface elevation of the 100-Year return frequency flood event. Stairs would be constructed to be removed and stored out of the floodplain during periods when the camp is not in use.

- Accessibility ramps and paths of travel would be constructed of firm and stable natural materials that can be easily replaced if washed out by a flood event.

Pedestrian bridges across Thimbleberry Creek would be designed to accommodate passage of the 100-year peak flow. Given these design criteria, the risk of loss of structures due to flooding is less than significant.

Significant flooding on the South Fork Tuolumne River is the result of rain-on-snow events during winter or spring or sudden snowmelt events from extremely warm spring weather. Generally, these events do not happen when the camp is operational. Summer rain events, when the camp is occupied, do not generate sufficiently saturated soils to produce significant flood flows. It is estimated that maximum daily mean flow during camp operations would be 900 cfs (or 2,700 cfs assuming a three times increase in discharge due to burned watershed conditions) as compared to the 100-year event peak flow rate of 11,700 cfs. The Camp operators would be trained regarding the connection of summer rainfall to rising water levels in the river and creeks and would inform campers and staff of the dangers associated with rising water levels. Implementation of Mitigation Measure HYDRO- 4 would reduce potential safety risks associated with flooding to less than significant.

There are no significant dams along South Fork Tuolumne River upstream of the site and no levees along the river near the site. Therefore, risk of loss, injury, or death as the result of flooding due to a dam or levee failure is considered less than significant.

**j) Would the project expose the site to inundation by seiche, tsunami, or mudflow?**

Risk of seiche or tsunami is nil as there are no water bodies subject to seiche and tsunami near the BTC SUP area. The general area around BTC does not have a history of mudflows.

**Mitigation Measures**

**HYDRO-1** During detail design of BTC facilities and related site improvements, submit the US Army Corps of Engineers Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act permit applications and associated documentation to the Forest Service for review and comment.

**HYDRO-2** Prior to construction, update the floodplain map to reflect updated base mapping, base flood elevations, final structure placement, and finished floor elevations and submit to the Forest Service and FEMA for review and acceptance.

**HYDRO-3** During detail design of BTC facilities to be constructed and related site improvements, submit permit applications and associated documentation for the following to Forest Service for review and comment:

- a. California Department of Fish and Wildlife (CDFW): Application, plans, and specifications for work to obtain a Stream Alteration Agreement pursuant to Fish and Game Code sections 1600 *et seq.*

- HYDRO-4** Prior to BTC operations, provide a Camp Evacuation Plan for approval by the Forest Service that incorporates protocols and procedures for evacuation in response to summer season storm and/or winter and spring season rain-on-snow or sudden snowmelt events that may lead to high water flows.
- HYDRO-5** During detail design of BTC facilities and related site improvements, submit permit applications and associated documentation for the following to Forest Service for review and comment:
- a. California Water Quality Control Board, Division of Drinking Water: Application, plans, and specifications for permit for surface water appropriation and treatment for drinking water under the Porter-Cologne Water Quality Control Act of 1975 and Safe Drinking Water Act (Pub. L. 93-523).
  - b. Tuolumne County On-site Sewage Treatment and Disposal System Certification including percolation tests and soil profiles, system design plans and specifications (plot plan; grading plan; description of groundwater and soils; description of monitoring devices, system operation and function; and site evaluation and testing) necessary to obtain Certification of an on-site sewage treatment and disposal system pursuant to Tuolumne County Code Section 13.08.
- HYDRO-6** Prior to the beginning (April) and after each BTC summer operating period (October), test the water quality of the South Fork Tuolumne River both at the Hardin Flat Road bridge and at the downstream boundary of the permit area. File results with the Groveland Ranger District.
- HYDRO-7** Protect beneficial uses of water through implementation of Best Management Practices (BMPs) in accordance with Regional Water Quality Management Plan (USDA 2011), the National BMPs for Water Quality Management on National Forest System Lands (USDA 2012), and the Forest Plan Direction (USDA, 2017).
- HYDRO-8:** Follow Forest Plan Direction (USDA, 2017) for protection of Riparian Conservation Areas (RCAs) through compliance with the Riparian Conservation Objectives (RCOs). The project shall:
- a. Prepare an Erosion Control Plan / Stormwater Pollution Prevention Control Plan and BMP checklist as part of the construction documentation for Forest Supervisor approval prior to ground-disturbing activities. Reference Appendix A actions.
  - b. Prior to construction activities, delineate riparian zones around all streams and special aquatic features within the permit area to be retained. Exclude ground-disturbing mechanized equipment from operating within riparian zones to be retained.
  - c. Clean equipment used for instream work prior to entering the water body. Remove external oil, grease, dirt and mud from the equipment and repair leaks prior to arriving at the project site. Inspect all equipment before unloading at site. Inspect equipment daily for leaks or accumulations of grease, and correct identified problems before entering streams or areas that drain directly to water bodies. Remove all dirt and plant parts to ensure that noxious weeds and aquatic invasive species are not brought to the site.
    - Locate construction access perpendicular to the channel and minimize the number of channel crossings and channel damage. Upon completion of use,

- repair damage to the stream course, including banks and channels, to maintain a hydrologically stable channel.
- Remove all project debris from the stream in a manner that will cause the least disturbance.
  - Minimize streambank and riparian area excavation during construction: stabilize adjacent areas disturbed during construction using surface cover (mulch), retaining structures, and/or mechanical stabilization materials.
  - Keep excavated materials out of channels, floodplains, and wetlands. Install silt fences or other sediment- and debris-retention barriers between the water body and construction material stockpiles and wastes. Dispose of unsuitable material in approved waste areas outside of the RCA.
  - Conduct operations during the least critical periods for water and aquatic resources: when streams are dry or during low-water conditions.
- d. Locate equipment staging and mitigate by use of erosion prevention measures to avoid sedimentation effects and delivery to a watercourse.
- e. Implement erosion control measures as needed on all lands disturbed by construction following completion of construction. Reference Appendix A actions.
- f. Conduct watering during construction for dust abatement using approved existing water source locations. Treat construction approaches and staging areas to prevent sediment production and delivery to a watercourse.
- Check all water-drafting vehicles daily and repair as necessary to prevent leaks of petroleum products from entering RCAs. Water-drafting vehicles will contain petroleum-absorbent pads, which are placed under vehicles before drafting. Water-drafting vehicles will contain petroleum spill kits. Dispose of absorbent pads according to the Hazardous Response Plan.
  - Use screening devices for water drafting pumps. Use pumps with low entry velocity to minimize removal of aquatic species, including juvenile fish, amphibian egg masses and tadpoles, from aquatic habitats. Pump intake screening specification will be provided and put in the project file.
  - Prohibit water drafting by more than one truck at a time.
- g. Allow temporary refueling and servicing only at approved construction staging sites. Rehabilitate temporary staging, parking, and refueling/servicing areas immediately following use.
- Prepare a Spill Prevention and Containment and Counter Measures (SPCC) plan where total oil products on site in above-ground storage tanks exceed 1320 gallons. Review spill plans to ensure they are up-to-date.
  - Install contour berms and trenches around vehicle service and refueling areas, chemical storage and use areas, and waste dumps to fully contain spills. Use liners as needed to prevent seepage to groundwater.
  - Report spills and initiate appropriate clean-up action in accordance with applicable state and Federal laws, rules and regulations. The hazardous materials coordinator's name and phone number will be available to Forest Service personnel who administer or manage activities utilizing petroleum-powered equipment.
  - Remove contaminated soil and other material from Forest Service lands and dispose of this material in a manner according to controlling regulations.

- h. Place burn piles a minimum of 50 feet away from the South Fork Tuolumne River, Thimbleberry Creek, or intermittent streams and 25 feet away from ephemeral drainages unless otherwise approved by a hydrologist and/or soil scientist. Locate piles outside of areas that may receive runoff from roads. Burn piles in the fall or winter.
- i. Conduct implementation and effectiveness monitoring using the Best Management Practices Evaluation Program and the National Core Monitoring Protocols (FS - 990b) as a supplement.

**References**

Blair Church and Flynn, Consulting Engineers and 2M Associates. 2017. Watershed Management Report, Berkeley Tuolumne Camp (Permit 46690) Groveland Ranger District, Stanislaus National Forest. October 7, 2017.

United States Department of Agriculture, Stanislaus National Forest. 2017. Forest Plan Direction - Stanislaus National Forest, Sonora, CA.

|                                                                                                                                                                                                                                                                                                             | <u>Potentially<br/>Significant<br/>Impact</u> | <u>Potentially<br/>Significant<br/>Unless<br/>Mitigation<br/>Incorporated</u> | <u>Less Than<br/>Significant<br/>Impact</u> | <u>No<br/>Impact</u>                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------------|---------------------------------------------|-------------------------------------|
| <b>10. LAND USE PLANNING.</b> Would the project:                                                                                                                                                                                                                                                            |                                               |                                                                               |                                             |                                     |
| a) Physically divide an established community?                                                                                                                                                                                                                                                              | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |
| c) Conflict with any applicable habitat conservation plan or natural community conservation plan?                                                                                                                                                                                                           | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |

**Environmental Setting**

BTC currently has a SUP to operate Camp facilities on approximately 14 acres at its present location. BTC has been closed since the 2013 Rim Fire which burned the majority of Camp facilities and much of the forest and vegetation contained within existing BTC permit boundaries.

**Regulatory Setting**

The BTC site is Federal land under the jurisdiction of the SNF. The City of Berkeley is applying for a new SUP that will expand the BTC area from its currently SUP of 14 acres to an expanded area of approximately 30 acres. The SUP must be consistent with the policies and standards contained in the *Forest Plan Direction - Stanislaus National Forest* (Forest Plan). Because of the expanded 30-acre SUP area, a Forest Plan Direction amendment is needed to accommodate the Camp.

**Impact Discussion**

The Project will not impact land use planning and will not conflict with the Forest Plan. A brief discussion of each environmental issue included under Section 10 is presented below.

**a) Would the project physically divide an established community?**

The proposed Project would expand the SUP area by approximately sixteen acres into open forest lands. BTC would continue to be an integrated camp facility accessible to all Camp guests, staff, and the visiting public. Approximately 1-mile downstream from the Camp is the community of Hardin Flat, consisting of predominantly of residences, recreation cabins, and private campgrounds. The expansion of the SUP will be away from the Hardin Flat area and will not impact the community.

**b) Would the project conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?**

BTC is located within the SNF and is designated Public in *the Tuolumne County General Plan* and the *Tuolumne County Zoning Ordinance*. The Public land use designation applies to all lands owned by public agencies and recognizes that these lands are exempt from County land use regulations (Tuolumne

County). The proposed Project is subject to the *Forest Plan Direction* (USDA 2017) and will be reviewed by the Forest Service for compliance prior to approval of the SUP. Implementation of Mitigation Measure LUP-1 would assure consistency with the policies of the *Forest Plan Direction*.

**c) Would the project conflict with any applicable habitat conservation plan or natural community conservation plan?**

The *Forest Plan Direction* addresses habitat conservation issues. Forest Service approval of the Project as called for in LUP-1 would confirm there are no habitat conservation conflicts.

**Mitigation Measures**

**LUP-1** Submit all plans to the Forest Service for consistency review with the *Forest Plan Direction* and prior to Camp construction.

**References**

Tuolumne County. *Tuolumne County General Plan*. Available on the County website at:  
<https://www.tuolumnecounty.ca.gov/185/General-Plan-Policy>.

USDAe, Stanislaus National Forest. 2017. *Forest Plan Direction - Stanislaus National Forest, Sonora, CA*.



|                                                                                                                                                                       | <u>Potentially<br/>Significant<br/>Impact</u> | <u>Potentially<br/>Significant<br/>Unless<br/>Mitigation<br/>Incorporated</u> | <u>Less Than<br/>Significant<br/>Impact</u> | <u>No<br/>Impact</u>                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------------|---------------------------------------------|-------------------------------------|
| <b>11. MINERAL RESOURCES.</b> Would the project:                                                                                                                      |                                               |                                                                               |                                             |                                     |
| a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?                                | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |

**Environmental Setting**

BTC is located in SNF. There are no known mineral resources located within the existing BTC SUP area.

**Impact Discussion**

The proposed Project will not affect any known mineral resources. A brief discussion of each environmental issue included under Section 11 is presented below.

**a) Would the project result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?**

The proposed BTC SUP area is within the SNF and the *Forest Plan Direction* (USDA 2017) does not identify the Project site as an area containing mineral resources.

**b) Would the project result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?**

No impact. See **Subsection 11a** above.

**Mitigation Measures**

None required.

**References**

United States Department of Agriculture, Stanislaus National Forest. 2017. *Forest Plan Direction - Stanislaus National Forest, Sonora, CA.*

|                                                                                                                                                                                                                                                                     | Potentially Significant Impact | Potentially Significant Impact Unless Mitigation Incorporated | Less Than Significant Impact        | No Impact                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|---------------------------------------------------------------|-------------------------------------|--------------------------|
| 12. <b>NOISE.</b> Would the project result in:                                                                                                                                                                                                                      |                                |                                                               |                                     |                          |
| a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan, specific plan, noise ordinance or applicable standards of other agencies?                                                                     | <input type="checkbox"/>       | <input checked="" type="checkbox"/>                           | <input type="checkbox"/>            | <input type="checkbox"/> |
| b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?                                                                                                                                                             | <input type="checkbox"/>       | <input type="checkbox"/>                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?                                                                                                                                      | <input type="checkbox"/>       | <input checked="" type="checkbox"/>                           | <input type="checkbox"/>            | <input type="checkbox"/> |
| d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?                                                                                                                          | <input type="checkbox"/>       | <input type="checkbox"/>                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? | <input type="checkbox"/>       | <input type="checkbox"/>                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?                                                                                                      | <input type="checkbox"/>       | <input type="checkbox"/>                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

**Environmental Setting**

BTCe is in rural southern Tuolumne County surrounded by forest lands. The nearest sensitive receptors are permanent and seasonal residences located along the South Fork of the Tuolumne River downstream and west of the Camp, none closer than about 1,200 feet. The closest town is Groveland, about 16 miles east along State Highway 120. Highway 120 is located about 1,000 feet north of the Project site at its closest boundary. There are two small airports/airstrips about 14 miles northwest of the site: Pine Mountain Lake Airport and the Hermitage airstrip. At these distances, motor vehicle and aircraft noise would have only a minor influence on ambient noise levels on-site and in the vicinity.

There is currently no noise generated from BTC camp activities as the Camp has not been in operation since the Rim Fire in 2013. Existing noise within the Project site is from the sounds of the cascading South Fork Tuolumne River waters, which bisects the Camp and traffic along Hardin Flat Road which is adjacent to the north and west boundaries of BTC.

**Impact Discussion**

Sound is created when vibrating objects produce pressure variations that move rapidly outward into the surrounding air. The more powerful the pressure variations, the louder the sound perceived by a listener. The decibel (dB) is the standard measure of loudness relative to the human threshold of perception. Noise

is a sound or series of sounds that are intrusive, objectionable or disruptive to daily life. Many factors influence how a sound is perceived and whether it is considered disturbing to a listener; these include the physical characteristics of sound (e.g., loudness, pitch, duration, etc.) and other factors relating to the situation of the listener (e.g., the time of day when it occurs, the acuity of a listener's hearing, the activity of the listener during exposure – is s/he sleeping, working, talking? etc.). Environmental noise has many documented undesirable effects on human health and welfare, either psychological (e.g., annoyance and speech interference) or physiological (e.g., hearing impairment and sleep disturbance).

The uses of the reconstructed BTC will be compatible with the site's current noise exposure (mostly from distant motor vehicle and aircraft noise sources). Construction noise and vibration will not significantly impact the closest existing residences. Camp operations would generate noise associated with transportation, staff housing located north of Hardin Flat Road and camp activities, including amplified sound used during stage programs. Noise associated with BTC activities would be less than significant, with the exception of the amplified sound emissions from the stage which could result in potentially significant noise impacts to the closest existing residences. However, with implementation of Mitigation Measure NOISE-1, noise impacts associated with the amplified sound system would be less than significant. A brief discussion of each environmental issue included under Section 12 is presented below.

**a) Would the project expose persons to or generate noise levels in excess of standards established in the local general plan, specific plan, noise ordinance or applicable standards of other agencies?**

The BTC site is surrounded by rural forestlands and is not closely exposed to strong transportation noise sources (i.e., the closest major road, SR-120, comes no closer than 1,000 feet and the closest airport is more than ten miles northwest). The nearest residence is approximately 1,200 feet from the west-most family tent cabin, approximately 1,500 feet from the staff housing (high activity area), approximately 1,500 feet from the stage and approximately 1,200 feet from the center of Camp (high activity area). BTC is located on Forest Service land and therefore is not subject to the *Tuolumne County General Plan Noise Element (Noise Element)* (County of Tuolumne). However, the noise analysis applied the maximum allowable noise exposure standards presented in the *Noise Element* to identify potential noise impacts associated with the Project. The reconstructed BTC would be compatible with the site's low ambient noise levels (i.e., substantially lower than the standards set for residential in the *Noise Element*), just as the former BTC was before the Rim Fire. However, the amplified noise emissions from the stage speaker system could result in exceedance of the *Noise Element* standard for maximum allowable noise exposure for stationary noise sources, which could adversely affect nearby residences and represents a potentially significant noise impact. With implementation of Mitigation Measure NOISE-1, the stage speaker system would meet the *Noise Element's* noise exposure standard for stationary noise sources and would be a less than significant noise impact.

**b) Would the project expose persons to or generate excessive ground-borne vibration or ground-borne noise levels?**

Just as vibrating objects radiate sound through the air, if they are in contact with the ground they also radiate acoustical energy through the ground. If such an object is massive enough and/or close enough

to an observer, the ground vibrations can be perceptible and, if the vibrations are strong enough (as measured in vibration decibels, abbreviated VdB), they can cause annoyance to the observer and/or damage to buildings. Background ground vibration levels in most inhabited areas are usually 50 VdB or lower, well below the threshold of perception (i.e., typically about 65 VdB).

There are no policies or standards in the *Noise Element* for avoiding/reducing structural damage or annoyance from vibration impacts. However, it is most common for government agencies to rely on assessment methodologies, impact standards and vibration-reduction strategies developed by the Federal Transit Agency (FTA 2006). According to the FTA, limiting vibration levels to 94 VdB or less would avoid structural damage to wood and masonry buildings (which are typical of most residential structures), while limiting vibration levels to 80 VdB or less at residential locations would avoid significant annoyance to the occupants.

The most vibration-intensive piece of construction equipment associated with Project construction is a pile driver, which would be used for about a month during the bridge-building phase of Project construction. Sensitive receptors closer than 500 – 1,000 feet could be subject to vibration annoyance during pile driving. Other types of construction equipment are less vibration-intensive. Tracked earth-moving machinery could cause annoyance if they often come within 100 feet of a sensitive receptor during construction. But the closest residence from the Project site is approximately 1,200 feet west of the site. Thus, the Project's construction vibration impacts would be less than significant.

**c) Would the project cause a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?**

Upon completion of Project construction, noise sources that could permanently change the noise exposure circumstance of nearby residences during Camp operations are noise from outdoor leisure activities, amplified sound emissions from the Camp stage speakers and motor vehicle traffic on local roadways (see Section 16 Transportation and Circulation) As discussed under Subsection 12a above, the Project would be compatible with the Noise Element with the exception of the amplified noise emissions from the stage speakers. But with implementation of Mitigation Measure NOISE-1, potentially significant noise impacts associated with the stage speakers would be less than significant.

Camp operations would add about 126 daily/10.5 average hourly motor vehicle trips to the local roads (which is about the same number added by motor vehicle trips added by BTC before the Rim fire). Such relatively small increments to existing local traffic volumes would not substantially change the noise levels at noise sensitive uses near SR 120 or Hardin Flat Road and is considered a less than significant impact.

**d) Would the project cause a substantial temporary or periodic increase in ambient noise levels?**

Construction activities would result in a temporary increase in noise emissions during the two-year construction period, but due to intervening topography, sound generated by the waters of the South Fork Tuolumne River, distance, and implementation of best manage practices to reduce noise emissions

from construction equipment, temporary noise emissions affecting the nearest residence would be within acceptable levels.

The Federal Highway Administration (FHWA) Roadway Construction Noise Model (RCNM) was used to estimate the maximum and average outdoor noise levels during Project construction that the closest residence would experience. As presented in Table 9, average construction noise levels at the closest residence during most Project construction phases (except during the one-month period when piles are being driven for the bridge) would exceed current background levels, but not by so much as to cause substantial disruption to speech and tranquility to people outdoors. Peak noise levels at the closest residence during pile driving for the bridge foundations could be disruptive to speech and tranquility during the short periods of time when each pile is being driven, but only for one month of the two-year total Project construction period, and only during weekday, daytime hours to which all Project construction would be limited. Thus, Project construction noise impacts would be less than significant.

**TABLE 9: MODELED CONSTRUCTION NOISE LEVELS AT THE CLOSEST RESIDENTIAL USES DURING ALL PROJECT CONSTRUCTION PHASES**

| <b>Receptor</b>                                                  | <b>Distance from Construction Activity (feet)</b> | <b>Maximum Construction Daytime Noise Level (dB)</b> | <b>Average Construction Daytime Noise Level (dB)</b> |
|------------------------------------------------------------------|---------------------------------------------------|------------------------------------------------------|------------------------------------------------------|
| Closest Residential to Project site during Demolition            | 1200                                              | 57.4                                                 | 55.1                                                 |
| Closest Residential to Project site during Paving                | 1200                                              | 55.6                                                 | 50.2                                                 |
| Closest Residential to Project site during Electrical            | 1200                                              | 53.1                                                 | 50.8                                                 |
| Closest Residential to Project site during Water                 | 1200                                              | 53.1                                                 | 50.8                                                 |
| Closest Residential to Project site during Wastewater            | 1200                                              | 54.1                                                 | 52.6                                                 |
| Closest Residential to Project site during Bridge (Pile Driving) | 1200                                              | 67.4                                                 | 60.4                                                 |
| Closest Residential to Project site during Administrative/Staff  | 1200                                              | 53.8                                                 | 51.1                                                 |
| Closest Residential to Project site during Camper                | 1200                                              | 53.8                                                 | 51.1                                                 |
| Closest Residential to Project site during Social/Recreation     | 1200                                              | 53.8                                                 | 51.1                                                 |

Source: Federal Highway Administration, Roadway Construction Noise Model (RCNM).

- e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?**

The Project site is about 14 miles southeast of the Pine Mountain Lake Airport. Thus, its aircraft noise impacts at the Project site are less than significant.

- f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?**

The Project site is about 14 miles southeast of the Hermitage airstrip. Thus, its aircraft noise impacts at the Project site are less than significant.

## Mitigation Measures

NOISE-1 The speaker system for the BTC stage shall be designed to ensure it does not exceed noise levels of 50  $L_{eq}$ , dB.

## References

County of Tuolumne. *Tuolumne County General Plan* Noise Element.

<https://www.tuolumnecounty.ca.gov/DocumentCenter/View/1131/Chapter-5---Noise?bidld=>

FTA (Federal Transit Administration). 2006. *Transit Noise and Vibration Impact Assessment*.

[http://www.fta.dot.gov/documents/FTA\\_Noise\\_and\\_Vibration\\_Manual.pdf](http://www.fta.dot.gov/documents/FTA_Noise_and_Vibration_Manual.pdf)

FHWA (Federal Highway Administration). 2006. *Roadway Construction Noise Model User's Guide*.

[https://www.fhwa.dot.gov/environment/noise/construction\\_noise/rcnm/rcnm.pdf](https://www.fhwa.dot.gov/environment/noise/construction_noise/rcnm/rcnm.pdf)

|                                                                                                                                                                                                         | Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact | No Impact                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------------------------------|------------------------------|-------------------------------------|
| <b>13. POPULATION AND HOUSING.</b> Would the project:                                                                                                                                                   |                                |                                                        |                              |                                     |
| a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and business) or indirectly (for example, through extension of roads or other infrastructure)? | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |
| b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?                                                                                   | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |
| c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?                                                                                             | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |

**Environmental Setting**

Prior to the 2013 Rim Fire, BTC accommodated 360 campers and staff during the summer season. Currently there is no formal use of the Camp.

**Impact Discussion**

The proposed Project would not increase Camp capacity from the pre-fire condition. BTC would accommodate 360 campers and staff. The Camp Manager cabin is proposed to be constructed to support all-year habitation, useful for Camp security and maintenance. A brief discussion of each environmental issue included under Section 13 is presented below.

**a) Would the project induce substantial population growth in an area, either directly (for example, by proposing new homes and business) or indirectly (for example, through extension of roads or other infrastructure)?**

The reconstruction of BTC would not increase historic summer camper capacity. The all year Camp Manager cabin would potentially add one-two full-time residents to the local population. This is not considered a substantial inducement to population growth in the area..

**b) Would the project displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?**

BTC would be operated as a seasonal recreational facility and would contain one new permanent housing feature in the form of the Camp Manager’s cabin. No housing would be displaced due to the proposed Project.

**c) Would the project displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?**

See Subsection 13b above.

**Mitigation Measures**

None required.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Potentially<br>Significant<br>Impact | Potentially<br>Significant<br>Unless<br>Mitigation<br>Incorporated | Less Than<br>Significant<br>Impact  | No<br>Impact                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|--------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| <b>14. PUBLIC SERVICES.</b> Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered government facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: |                                      |                                                                    |                                     |                                     |
| a) Fire protection?                                                                                                                                                                                                                                                                                                                                                                                                                                | <input type="checkbox"/>             | <input type="checkbox"/>                                           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| b) Police protection?                                                                                                                                                                                                                                                                                                                                                                                                                              | <input type="checkbox"/>             | <input type="checkbox"/>                                           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| c) Schools?                                                                                                                                                                                                                                                                                                                                                                                                                                        | <input type="checkbox"/>             | <input type="checkbox"/>                                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| d) Parks?                                                                                                                                                                                                                                                                                                                                                                                                                                          | <input type="checkbox"/>             | <input type="checkbox"/>                                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| e) Other public facilities?                                                                                                                                                                                                                                                                                                                                                                                                                        | <input type="checkbox"/>             | <input type="checkbox"/>                                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

### Environmental Setting

BTC is located within Direct Protection Area of the Stanislaus National Forest that responds to wildfire with the State of California operating under the *2012-2018 California Master Cooperative Wildland Fire Management And Stafford Act Response Agreement*. The California Department of Forestry and Fire Protection (CalFire) provides first response for medical aids. Police protection is provided by the Tuolumne Sheriff's Office.

### Impact Discussion

The BTC project will not adversely affect public services. A brief discussion of each environmental issue included under Section 14 is presented below.

#### a) Fire protection

The reconstruction of BTC will include an emergency water supply in the form of an approximately 240,000 gallon water tank for fire-fighting purposes per state code. BTC will manage brush control within the Camp developed areas to minimize fire risk. All Camp facilities will meet state fire code regulations. The City maintains a BTC Operating Plan outlining emergency evacuation procedures in the event of a flood or fire, and safety guidelines for campers and staff to follow.

#### b) Police protection

The Tuolumne County Sheriff's office has historically provided police protection services to BTC. Operating the Camp at the same capacity and for the same periods of time as prior to the fire would not present an undue burden to police services and would not adversely impact County police protection services.

#### c) Schools

The Project will not impact schools in Tuolumne County.



**d) Parks**

The Project will not impact parks in Tuolumne County.

**e) Other public facilities**

The Project will not impact other public facilities in Tuolumne County

**Mitigation Measures**

None required.

|                                                                                                                                                                                                                | <u>Potentially<br/>Significant<br/>Impact</u> | <u>Potentially<br/>Significant<br/>Unless<br/>Mitigation<br/>Incorporated</u> | <u>Less Than<br/>Significant<br/>Impact</u> | <u>No<br/>Impact</u>                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------------|---------------------------------------------|-------------------------------------|
| <b>15. RECREATION.</b> Would the project:                                                                                                                                                                      |                                               |                                                                               |                                             |                                     |
| a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| b) Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?                       | <input type="checkbox"/>                      | <input checked="" type="checkbox"/>                                           | <input type="checkbox"/>                    | <input type="checkbox"/>            |

**Environmental Setting**

BTC is a private recreational facility located within the SNF. It is not within the jurisdiction of Tuolumne County parks.

**Impact Discussion**

The proposed Project will not impact Tuolumne County parks. A brief discussion of each environmental issue included under Section 15 is presented below.

- a) **Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?**

The proposed Project will not impact neighborhood or regional parks within the vicinity of the proposed Project.

- b) **Would the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?**

The Project proposes reconstruction of a recreational facility destroyed during the 2013 Rim Fire. This document identifies a number of mitigation measures in other sections to reduce Project impacts. No additional mitigation measures are required to reduce adverse physical effects on the environment to less than significant levels.

**Mitigation Measures**

None required.

|                                                                                                                                                                                                                                                                                                                                                                                                                               | <u>Potentially<br/>Significant<br/>Impact</u> | <u>Potentially<br/>Significant<br/>Unless<br/>Mitigation<br/>Incorporated</u> | <u>Less Than<br/>Significant<br/>Impact</u> | <u>No<br/>Impact</u>                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------------|---------------------------------------------|-------------------------------------|
| <b>16. TRANSPORTATION AND CIRCULATION.</b>                                                                                                                                                                                                                                                                                                                                                                                    |                                               |                                                                               |                                             |                                     |
| Would the proposal result in:                                                                                                                                                                                                                                                                                                                                                                                                 |                                               |                                                                               |                                             |                                     |
| a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?                                                                                                                                                                | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?                                                                                                                                                                                                                                                               | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?                                                                                                                                                                                                                                                                        | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| e) Result in inadequate emergency access?                                                                                                                                                                                                                                                                                                                                                                                     | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |
| f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?                                                                                                                                                                                                                                        | <input type="checkbox"/>                      | <input type="checkbox"/>                                                      | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |

**Environmental Setting**

The BTC site is accessed via Hardin Flat Road, a rural local road operated and maintained by Tuolumne County. The most recent average daily traffic (ADT) count estimate by Tuolumne County is from 1991 with a 130 ADT count estimated at the Hardin Flat Road bridge of 130 vehicles (Allen, Tanya)source:. At that time, much of that traffic was related to BTC, the Yosemite lakes RV resort and recreation residences along the South Fork Tuolumne River.

In 2017, when BTC was not operational, Caltrans estimated 170 ADT at the bridge site (Scott-Heim, Blossom 2018). Much of that use would have been related to the Yosemite Lake RV resort (located northwest of BTC) which provides 254 full hook-ups, 130 tent sites and a variety of cabin and yurt rental accommodations; and some incidental use is generated by the residences located between BTC and Yosemite Lakes RV resort.

Tuolumne County Ordinance Code 17.60 establishes on-site parking standards for BTC. The BTC project is required to provide 133 parking spaces on site.

## Impact Discussion

The proposed Project will provide adequate parking spaces on-site based on Tuolumne County code requirements. Vehicle trips generated by the Project would be less than significant. . A brief discussion of each environmental issue included under Section 16 is presented below.

- a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?**

The reconstruction of BTC would maintain the number of campers and staff at the pre-Rim Fire occupancy level of 360 individuals. A typical family stay at BTC is approximately for four days (three nights) involving arrival, departure, and one trip outside of Camp per stay typically to visit Yosemite National Park (Veramay, Craig). The results in a typically weekly turnover factor of families at the Camp of two. With an average of four trips per family visit at full capacity (arrival, departure, and one round trip outside of camp) this would equate to an approximately 88 ADT count. Assuming a 50 percent use factor for estimated vehicle trips generated by staff and service deliveries, the total traffic volume along Hardin Flat Road generated by BTC would be approximately 132 ADT. This level of use will not conflict with any transportation plans and represents a less than significant impact..

- b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?**

There are no conflicts created by the Project with any congestion management programs.

- c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?**

The Project would not affect air traffic patterns. The nearest airport is Pine Mountain Lake Airport which is about 14 miles southeast of BTC.

- d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?**

The proposed Project will improve safety conditions historically experienced along Hardin Flat Road. Before the Rim Fire, many BTC campers parked along Hardin Flat Road and walked on the road to access the Camp. Reconstruction of the BTC site will provide adequate off-street parking spaces per County ordinance for all campers and staff. Paths will direct staff and campers to pedestrian crosswalks installed to County standards on Hardin Flat Road.

- e) Result in inadequate emergency access?**

Proposed signage and driveway improvements into the Camp will meet County emergency access standards.

**f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?**

The proposed BTC would improve safety conditions on Hardin Flat Road. See **Subsection 16d** above.

**Mitigation Measures**

None required.

**References**

Allen, Tanya PE, Supervising Engineer, Tuolumne County Community Resources Agency. Personal communication.

Scott-Heim, Blossom, P.E, Associate Engineer, Caltrans. Email communication dated August 14, 2018.

Veramay, Craig, [title?] [date?]

**17. Tribal Cultural Resources.**

Would the project:

a) Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or

ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5025.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

|     | Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact | No Impact                           |
|-----|--------------------------------|--------------------------------------------------------|------------------------------|-------------------------------------|
| a)  | <input type="checkbox"/>       | <input checked="" type="checkbox"/>                    | <input type="checkbox"/>     | <input type="checkbox"/>            |
| i)  | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |
| ii) | <input type="checkbox"/>       | <input checked="" type="checkbox"/>                    | <input type="checkbox"/>     | <input type="checkbox"/>            |

**Environmental Setting**

See Section 5 Cultural Resources for a discussion regarding the presence of cultural resources at the BTC site.

**Impact Discussion**

There are no historic buildings located within the BTC SUP area. Selected buildings damaged or destroyed would be removed but there is concern demolition and removal of these buildings may damage the recorded archaeological resource sites. Mitigation Measure CUL-1 requires selected structures be removed by hand to prevent damage to the archaeological resource sites. Mitigation Measure CUL-2 and Mitigation Measure CUL-3 will protect the archaeological resource sites when BTC is reopened.

**Mitigation Measures**

**CUL-1** Existing structures identified for removal shall be removed by hand to protect cultural resources.

**CUL-2** Cultural resources shall be protected through application of Standard Protection Measures as determined by Programmatic Agreement Among the USDA, Forest Service, Pacific Southwest Region (Region 5), California State Historic Preservation Officer, Nevada State Historic Preservation Officer and the Advisor Council on Historic Preservation Regarding the Process for Compliance with Section 106 of the National Historic Preservation Act for Management of Historic Properties by the National Forests of the Pacific Southwest Region (Regional PA), signed February 2013. In addition:

- Natural plant succession will be allowed to occur within cultural resource site boundaries.
- Notify the Forest Service cultural resource specialist if a new cultural resource site is discovered during project implementation and all activities within 150 feet of the resource will cease until consultations are completed.

**CUL-3** Buck and pole fencing shall be installed to protect cultural resources. Fencing shall be constructed by hand with no excavation.

## References

State of California. 2007. *Inadvertent Effect to Berkeley Tuolumne Camp, Groveland Ranger District, Stanislaus National Forest, California*. Letter dated October 1, 2007.

State of California. 2015. *Determination of Eligibility for FS-05-16-51-1894, FS-05-16-54-1896 and FS-05-16-54-1895*. Letter dated September 21, 2015.

Groveland Ranger District, Stanislaus National Forest. 2007. *Historic Structure Report and National Register Evaluation for Berkeley Tuolumne Camp, Tuolumne County, California, Cultural Resource Management Report No. 05-16-4276*. Prepared for City of Berkeley. Prepared by Foothill Resources, Ltd. July 2007.

Strain, Kathy. 2017. Email dated November 20, 2017.

Tuolumne Me-Wuk Tribal Council. Letter dated October 28, 2015.

USDA. 2001. *Programmatic Agreement among the U.S.D.A. Forest Service, Pacific Southwest Region, California State Historic Preservation Officer, and Advisory Council on Historic Preservation Regarding the Identification, Evaluation, and Treatment of Historic Properties Managed by the National Forests of the Sierra Nevada, California* (Sierra PA). August 24, 2001.

United States Department of Agriculture, Stanislaus National Forest. 2017. Forest Plan Direction - Stanislaus National Forest, Sonora, CA.

|                                                                                                                                                                                                                                     | Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact        | No Impact                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------------------------------|-------------------------------------|-------------------------------------|
| <b>18. UTILITIES AND SERVICE SYSTEMS.</b>                                                                                                                                                                                           |                                |                                                        |                                     |                                     |
| Would the project:                                                                                                                                                                                                                  |                                |                                                        |                                     |                                     |
| a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?                                                                                                                                 | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?                              | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?                                       | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?                                                                              | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| e) Result in a determination by the wastewater treatment provider, which serves or may serve the project, that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?                                                                                                              | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| g) Comply with federal, state, and local statutes and regulations related to solid waste?                                                                                                                                           | <input type="checkbox"/>       | <input type="checkbox"/>                               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

**Environmental Setting**

Water supply and wastewater treatment are provided within the SUP area. BTC does not rely on municipal utilities systems.

**Impact Discussion**

The proposed BTC Project would install new onsite water and wastewater facilities to serve the Camp. A discussion of each environmental issue included under Section 17 is presented below.

**a) Would the project exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?**

The Project would construct wastewater treatment facilities sized to accommodate all Camp generated wastewater and designed and installed in compliance with Tuolumne County requirements.

**b) Would the project require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?**

There is no municipal water service at BTC. Groundwater resources outside the floodplain are inadequate to meet water demands for the Camp. BTC has traditionally drawn its drinking water from



South Fork Tuolumne River. A system composed of water intakes, pumps and an above-ground water storage tank(s) will be installed for both consumptive and fire suppression purposes. All existing underground water lines that did not burn during the rim Fire will be upgraded to current standards. The construction of these facilities would be in coordination with the entire Camp's construction and would not cause significant adverse environmental effects.

**c) Would the project require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?**

A series of both structural and non-structural storm-water management facilities would be implemented by the Project with chief purpose of maintaining water quality within Thimbleberry Creek and the South Fork Tuolumne River. An unnamed seasonal drainage would be redirected into Thimbleberry Creek. Both this drainage and Thimbleberry Creek would be vegetated as riparian corridors. All entrance drives and parking areas would be constructed of permeable materials. All pedestrian routes of travel would include water bars that direct stormwater runoff to vegetated areas. As called for in Mitigation Measures HYDRO-1 through HYDRO-8, a series of storm-water runoff best management practices will be used during construction. There would be no significant adverse environmental effects from these actions.

**d) Would the project have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?**

Camp water supply would be provided from South Fork Tuolumne River. Water consumption would be less than pre-Fire conditions because the number of campers and staff would be the same, however new water efficient fixtures would be installed.

The combination of effects from all of the proposed BTC activities and other past, present or reasonably foreseeable projects are not expected to create long-ranging adverse effects to downstream water supplies, either municipal (New Don Pedro Reservoir) or of uses in Hardin Flat. The one-time draw of approximately 280,000 gallons (0.86 acre feet) of water from the South Fork Tuolumne River for fire prevention storage purposes would occur in the springtime immediately prior to opening BTC. The daily water use of BTC would be the same (or less due to water efficient fixtures) as prior to the Rim Fire. No reported incidents of downstream water shortages have occurred during the 91-year history of BTC operations prior to the Rim Fire.

**e) Would the project result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?**

Waste-water treatment would be processed onsite. The wastewater treatment system proposes two buried septic tanks: one 13,000 gallon capacity for the main camp, and one 2,000 gallon capacity for the staff camp. Wastewater lines would be buried within central camp and Hardin Flat Road. A 60,000 square-foot leach field would process waste. Certification of an on-site sewage treatment and disposal system pursuant to Tuolumne County Code Section 13.08.270A would include percolation tests and soil profiles, review of system design plans and specifications (plot plan, grading plan, description of groundwater and soils, description of monitoring devices, system operation and function), and site system evaluation and operational testing prior to Camp reopening.

**f) Would the project be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?**

The City would contract with a County-approved waste management service for disposal of recyclable materials and other solid wastes. Project-related construction waste will be transported off-site to a certified waste management location.

**g) Comply with federal, state, and local statutes and regulations related to solid waste?**

The Project would comply with all applicable solid waste requirements.

**Mitigation Measures**

None required.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <u>Potentially Significant Impact</u> | <u>Potentially Significant Unless Mitigation Incorporated</u> | <u>Less Than Significant Impact</u> | <u>No Impact</u>         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------------------------------------|-------------------------------------|--------------------------|
| <b>18. MANDATORY FINDINGS OF SIGNIFICANCE.</b>                                                                                                                                                                                                                                                                                                                                                                                                           |                                       |                                                               |                                     |                          |
| a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? | <input type="checkbox"/>              | <input checked="" type="checkbox"/>                           | <input type="checkbox"/>            | <input type="checkbox"/> |
| b) Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)                                                                                                           | <input type="checkbox"/>              | <input type="checkbox"/>                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) Does the project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly?                                                                                                                                                                                                                                                                                                             | <input type="checkbox"/>              | <input checked="" type="checkbox"/>                           | <input type="checkbox"/>            | <input type="checkbox"/> |

**Impact Discussion**

- a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?**

The proposed BTC Project could adversely affect the western pond turtle, but with implementation of Mitigation Measures BIO-1 through BIO-4, significant impacts would be reduced to a less-than-significant level. The slender-stemmed monkey flower may be impacted during construction activities, but with implementation of Mitigation Measure BIO-5, impacts would be less than significant. Construction and/or operation of BTC could adversely affect terrestrial wildlife, however, with implementation of Mitigation Measures BIO-6 through BIO-8 and LUP-1, potential impacts would be less than significant.

Project construction and Camp operation could adversely affect archaeological resources however implementation of Mitigation Measures CUL-1 through CUL-3 and LUP-1, potential archaeological resources impacts would avoided and be less than significant.

- b) Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)**

The proposed Project would not result in cumulatively considerable impacts.

**c) Does the project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly?**

There is the potential for light and glare impacts and visual quality impacts, but with implementation of Mitigation Measures AES-1 through AES 4, impacts would be less than significant. The proposed Project could result in potentially significant temporary air quality impacts during construction activities, but with implementation of Mitigation Measure AIR-1, temporary air quality impacts would be less than significant. The potential for unstable soils within the BTC SUP area could adversely affect site grading activities and building stability, which is a significant impact, however, with implementation of Mitigation Measures GEO-1 and GEO-2, potential adverse impacts would be less than significant. There is the potential for significant water quality impacts, but with implementation of Mitigation Measures HYDRO-1 through HYDRO-8 and and LUP-1, potentially significant impacts would be less than significant. The potential for significant increases in operational noise at the Camp due to amplified noise emissions from the Camp stage speaker system could adversely affect nearby residences, With implementation of Mitigation Measure NOISE-1, noise emissions from the stage speaker system would be compatible with the *Tuolumne County Noise Element*.

## AGENCY DISTRIBUTION LIST

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State Clearinghouse  
1400 Tenth Street  
Sacramento, CA 95814





Map Package Figures

# City of Berkeley Tuolumne Camp Permit (46690)

## Figure 2 Pre-Rim Fire Conditions



LEGEND (see text for explanation)

-  Structure
  - R = Restroom
  - S = Showers
  - L = Laundry
  - C = Girl Staff Cabins
  - G = Girl Staff Cabins
  - B = Boy Staff Cabins
  - 12 = Family Tent Cabin
-  Structure Not Destroyed by Rim Fire

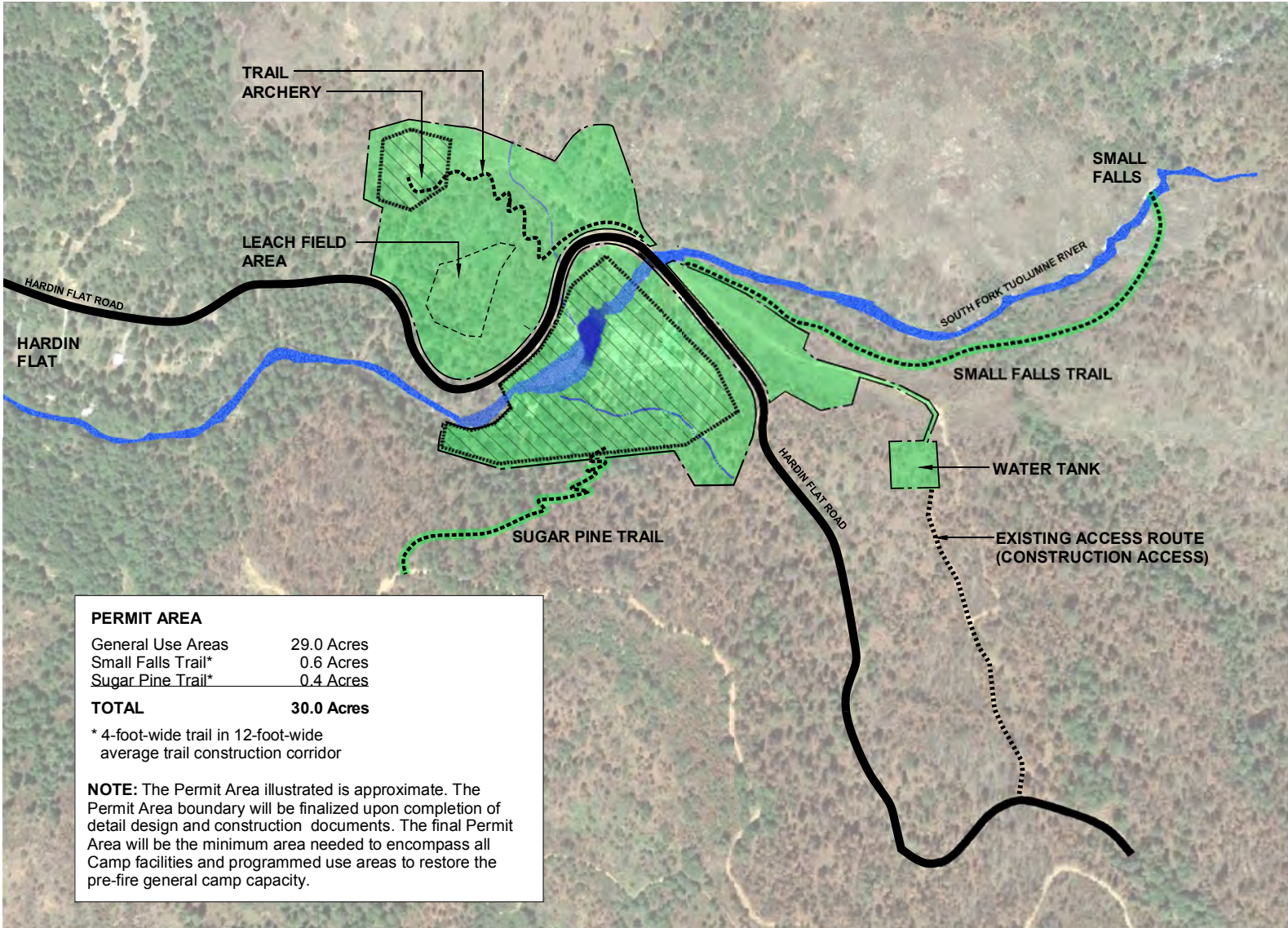
Scale  
0' 50' 100'



This drawing is conceptual and for planning processing purposes only. Program information, scale, location of areas, and other information shown are subject to field evaluation and modification.

DRAFT: 8/8/18








# City of Berkeley Tuolumne Camp Permit (46690)

**Figure 3**  
**Camp Permit Areas**

Proposed Permit Area boundary based on Conceptual Plans presented in Figure 2.01-3 and 2.01-4

**LEGEND** (see text for explanation)

-  Proposed Permit General Use Area
-  Existing Permit Area
-  Existing Permit Trails

NOTE: Existing permit boundary based on survey by F.M. Sweeney dated August 1941 as shown on map dated May 21, 1942 and titled:  
U.S. Department of Agriculture  
Forest Service, Stanislaus National Forest  
Big Oak Flat Road Recreation Area Berkeley  
Municipal Camp

Scale  
0' 200' 400'



This drawing is conceptual and for planning and permit processing purposes only. Program information, scale, location of areas, and other information shown are subject to field evaluation and modification.

DRAFT: 8-8-18

# City of Berkeley Tuolumne Camp Permit (46690)

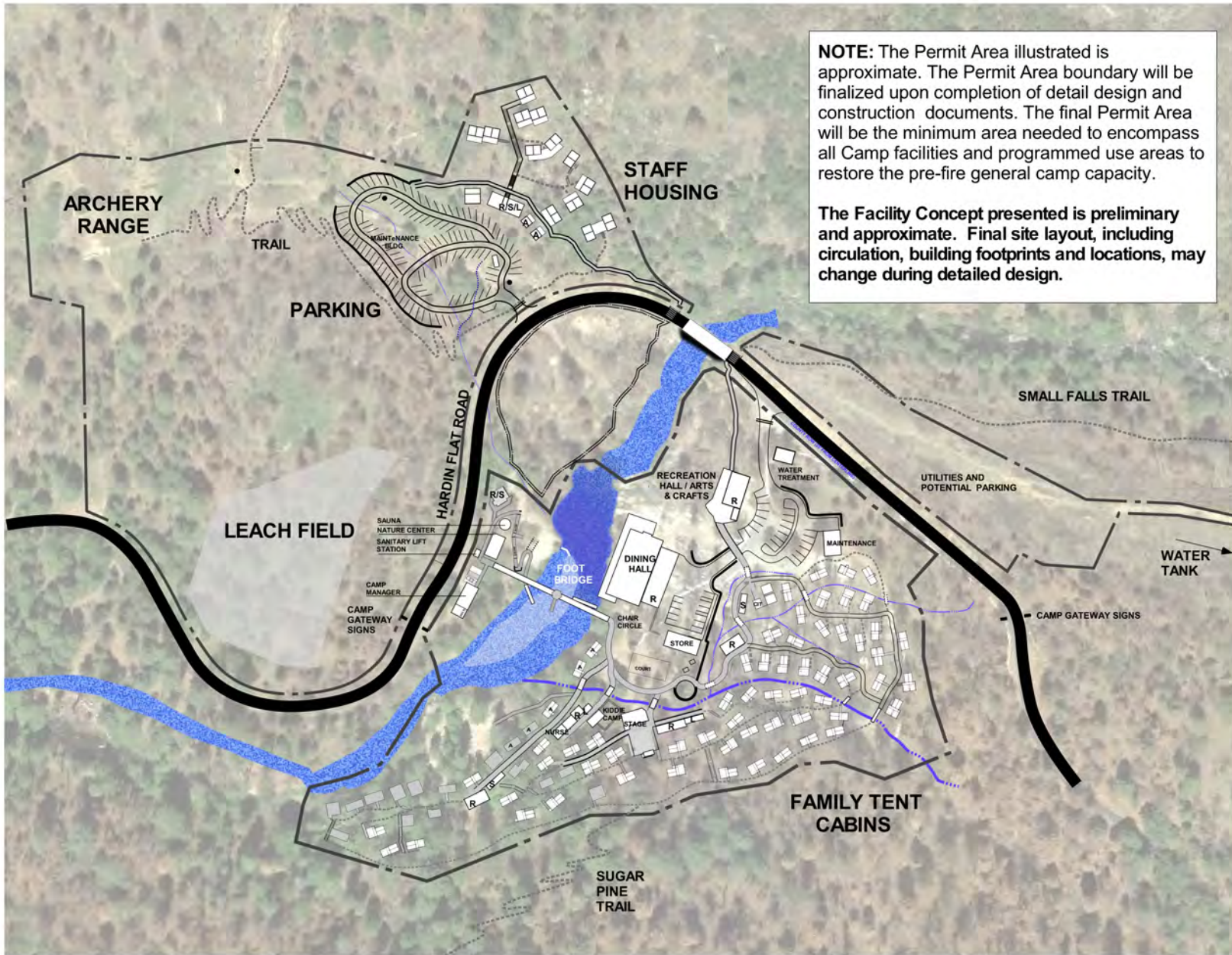
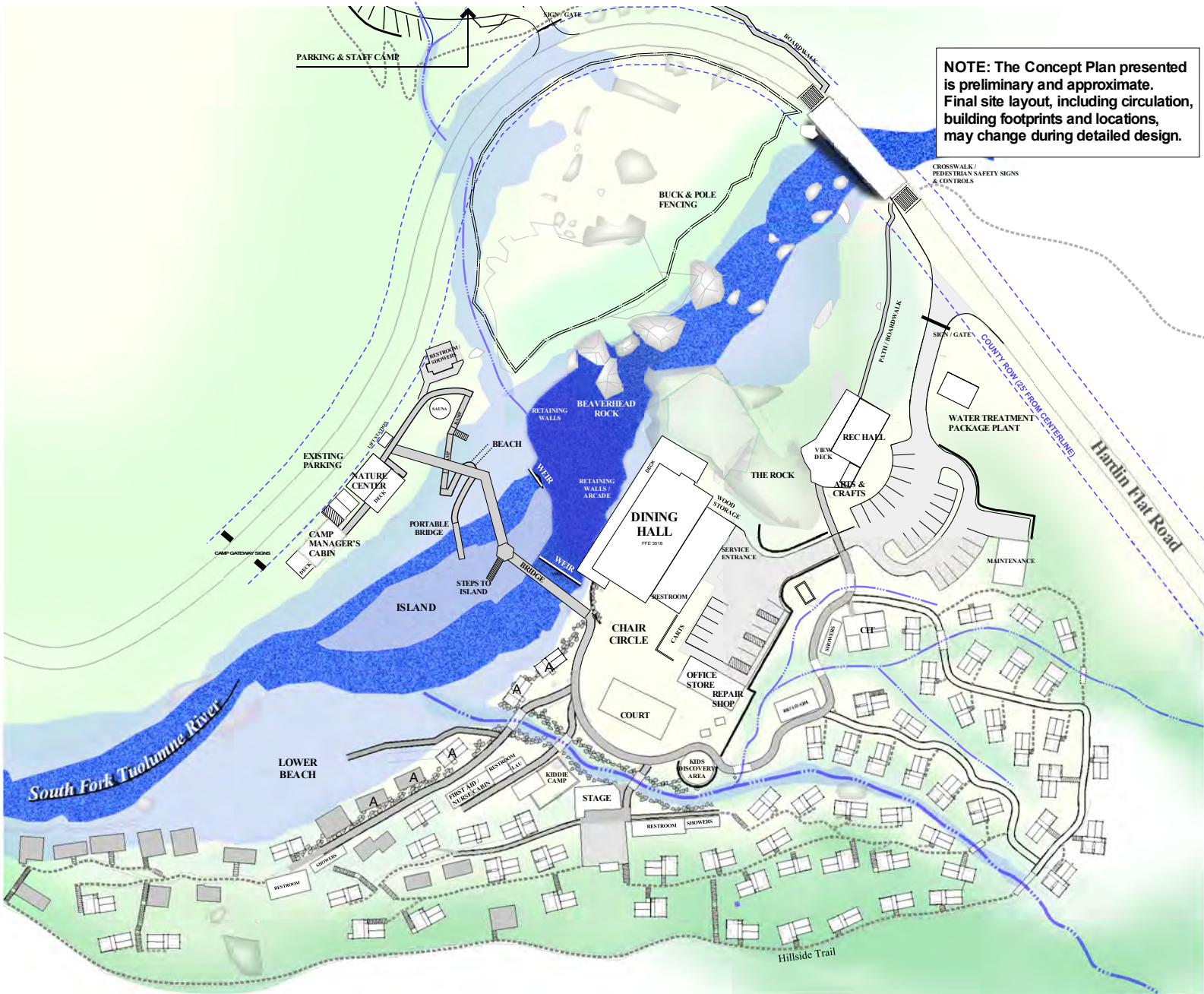


Figure 4  
**Facility Concept**  
(see also Figure 2.01-4 for detail of Central Camp area)

DRAFT: 8-8-18



**NOTE:** The Concept Plan presented is preliminary and approximate. Final site layout, including circulation, building footprints and locations, may change during detailed design.

**City of Berkeley  
Tuolumne Camp  
Permit (46690)**

Figure 5  
**Central Camp  
Facilities  
Concept Plan**

**LEGEND** (see text for explanation)

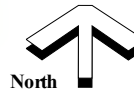
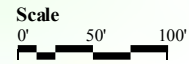
- Structures**  
 A= Accessible Tent Cabin  
 Existing  
 New
- Camp Paths**  
 Natural Surfaced Accessible Path: 5' to 8' wide  
 Natural Surfaced Path: 4' to 6' wide  
 Natural Surfaced Trail: 4' to 5' wide  
 Granite or Wood Stairs: 4' to 5' wide  
 Bridge  
 Bridge / Wildlife-friendly Culvert  
 Creek / Drainage Channel  
 100-Year Floodplain

**Scale**  
0' 50' 100'

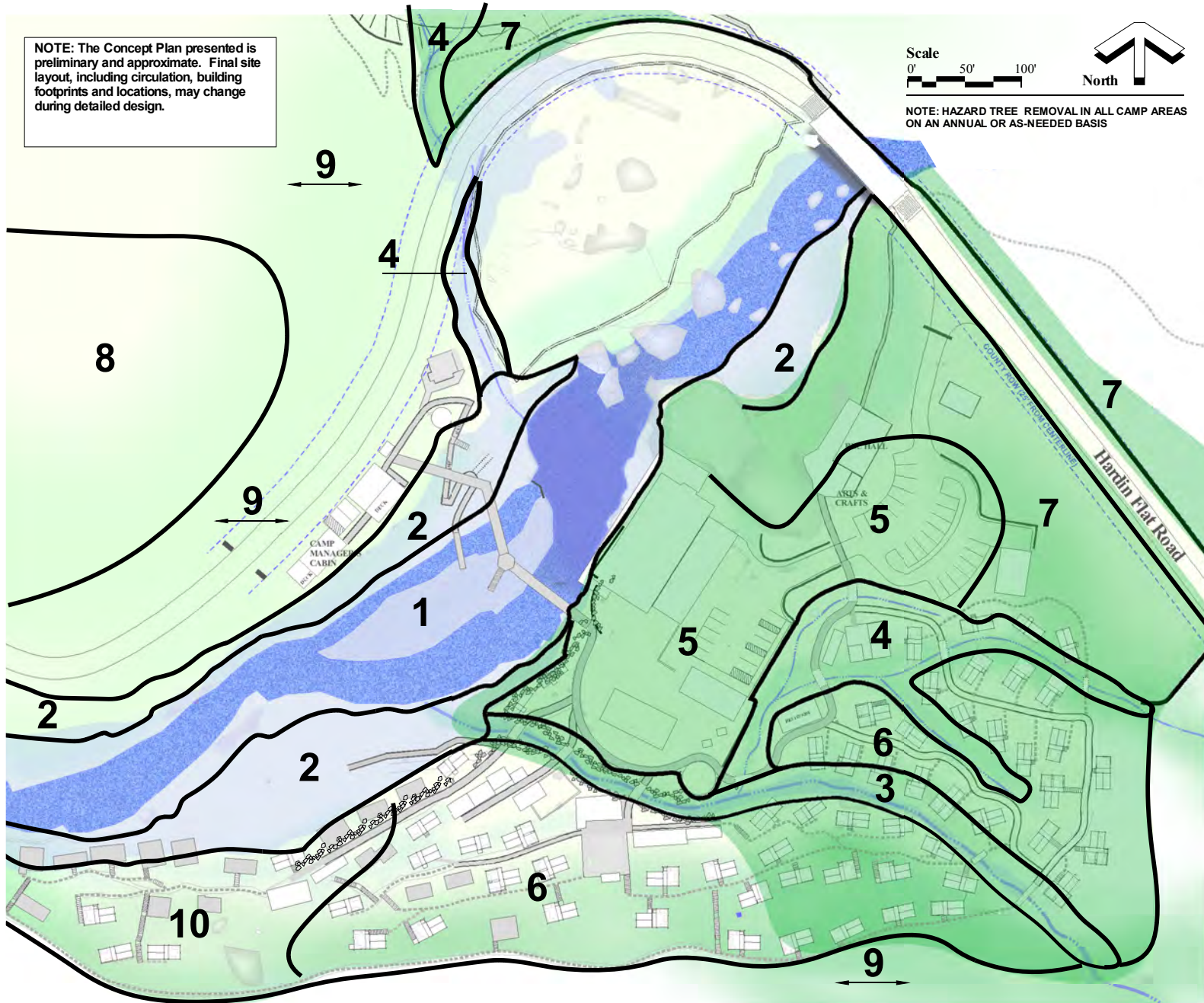


This drawing is conceptual and for planning purposes only. Program information, scale, location of areas, and other information shown are subject to review, field evaluation, and modification.

NOTE: The Concept Plan presented is preliminary and approximate. Final site layout, including circulation, building footprints and locations, may change during detailed design.



NOTE: HAZARD TREE REMOVAL IN ALL CAMP AREAS ON AN ANNUAL OR AS-NEEDED BASIS



# City of Berkeley Tuolumne Camp Permit (46690)

Figure 6  
**Vegetation  
Zone Concept**

**LEGEND** (see text for explanation)

- Zone 1: South Fork Tuolumne River, Island and Edge**
  - Provide shade to river, its fishery, and day use areas (island and beaches)
  - Enhance riparian wildlife corridor functions
- Zone 2: Riparian/Floodplain**
  - Enhance riparian wildlife corridor functions
  - Shade the river and its fisheries
- Zone 3: Riparian/Thimbleberry Creek**
  - Enhance riparian wildlife corridor functions
  - Provide a focal amenity and shade for family tent structures and central BTC use areas
  - Provide for groundcover to manage stormwater and enhance of water quality
- Zone 4: Intermittent Drainages**
  - Enhance wildlife corridor functions
  - Provide a focal amenity and shade for family tent structures
  - Provide groundcover to manage stormwater and enhance water quality of runoff from Hardin Flat Road culvert and internal camp pathway system
- Zone 5: Mixed Forest/Common Use Areas**
  - Provide relatively fast-growing open forest shade canopy for BTC
  - Provide for groundcover to manage stormwater and enhance water quality of runoff from internal BTC pathway system
  - Consider selective use of transplanted or large container trees for shade
- Zone 6: Mixed Forest, Shade and Erosion Control**
  - Provide relatively fast-growing open to moderately dense shade canopy for BTC
  - Provide for groundcover to manage stormwater runoff and enhance water quality
- Zone 7: Mixed Forest**
  - Provide visual screening between central BTC and Hardin Flat Road
  - Provide relatively fast-growing open to moderately dense shade canopy for BTC
- Zone 8: Hillside Meadow**
  - Develop meadow suitable for maintenance of leach field functions
  - Provide raptor foraging habitat
- Zone 9: General Upland/Mixed Forest**
  - Allow natural succession
- Zone 10: Fuel Modification of Existing Forest**
  - Allow natural succession
  - Provide for groundcover to manage stormwater runoff and enhance water quality

Priority Revegetation Program Area

This drawing is conceptual and for planning purposes only. Program information, scale, location of areas, and other information shown are subject to review, field evaluation, and modification.

## APPENDIX A: WATERSHED MANAGEMENT REQUIREMENTS

Table A-1 lists Riparian Conservation Area (RCA) Goals and Objectives and project-related management strategy requirements to implement the goals and objectives for Alternative 1 (Proposed Action).

Management requirements, designed to protect water quality and watershed conditions, are derived from Regional (USDA 2011) and National Best Management Practices (BMPs) (USDA 2012) and Riparian Conservation Objectives (RCOs) (USDA 2017, p. 189-191).

Riparian resources within Riparian Conservation Areas (RCAs) would be protected through compliance with the RCOs outlined in the Forest Plan (USDA 2017, p. 189-191). Best Management Practices (BMPs) protect beneficial uses of water by preventing or minimizing the threat of discharge of pollutants of concern.

Table A-2 lists the BMPs applicable to the alternatives with site-specific requirements and comments. The City of Berkeley would be responsible for consulting with a hydrologist and/or soil scientist prior to or during project implementation for interpretation, clarification, or adjustment of watershed management requirements as needed.

**TABLE A-1 RIPARIAN CONSERVATION OBJECTIVES AND MANAGEMENT REQUIREMENTS FOR PLANNING AND CONSTRUCTION**

| Standards and Guidelines                                                                                                                                                                                                                                                                                                                  | Alternative 1 (Proposed Action)<br>Management Requirements and References                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Riparian Conservation Objective 1:</b> Ensure that identified beneficial uses for the water body are adequately protected. Identify the specific beneficial uses for the project area, water quality goals from the Regional Basin Plan, and the manner in which the standards and guidelines will protect the beneficial uses.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>Ensure that management activities do not adversely affect water temperatures necessary for local aquatic- and riparian-dependent species assemblages.</p>                                                                                                                                                                              | <ul style="list-style-type: none"> <li>• Based on soil and hydrologic conditions, shade the waters of the South Fork Tuolumne River and Thimbleberry Creek and create wildlife corridors by planting, where feasible, riparian vegetation</li> <li>• Design wastewater collection systems to elevated above the 100-year water surface elevation of the South Fork Tuolumne River and not discharge any water directly into the South Fork Tuolumne River and Thimbleberry Creek.</li> </ul> <p>Law, code, or ordinance reference:</p> <ul style="list-style-type: none"> <li>• Section 25249.5-25249.13, California Health and Safety Code</li> <li>• Section 1602, California Fish and Game Code</li> <li>• Sections 5650-5656 of California Fish and Game Code</li> </ul> <p>Other references:</p> <ul style="list-style-type: none"> <li>• Best Management Practices (BMPs) in accordance with the <i>Regional Water Quality Management Plan</i> (USDA 2011)</li> <li>• National Best Management Practices for Water Quality Management on National Forest System Lands Volume 1: National Core BMP Technical Guide (USDA 2012).</li> <li>• FSH 2509.22, 12.51 Exhibit 04, BMP 5.4 - Revegetation of Surface-disturbed Areas</li> <li>• Clean Water Act: 33 U.S.C. §1251 et seq. (1972)</li> </ul> |
| <p>Limit pesticide applications to cases where project level analysis indicates that pesticide applications are consistent with riparian conservation objectives.</p>                                                                                                                                                                     | <ul style="list-style-type: none"> <li>• Use integrated pest management techniques</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

**TABLE A-1 RIPARIAN CONSERVATION OBJECTIVES AND MANAGEMENT REQUIREMENTS FOR PLANNING AND CONSTRUCTION**

| Standards and Guidelines                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Alternative 1 (Proposed Action) Management Requirements and References                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <b>Riparian Conservation Objective 1 (cont.)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>Within 500 feet of known occupied sites for the California red-legged frog, Cascades frog, Yosemite toad, foothill yellow-legged frog, mountain yellow-legged frog, and northern leopard frog, design pesticide applications to avoid adverse effects to individuals and their habitats.</p>                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>• Prepare Aquatic and Terrestrial Wildlife Biological Assessments (BAs) for federal threatened and endangered species.</li> </ul> <p>Law, code, or ordinance reference:</p> <ul style="list-style-type: none"> <li>• Endangered Species Act (6 U.S. Code Chapter 35)</li> <li>• California Endangered Species Act (Fish and Game Code Section 2050-2069)</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Riparian Conservation Objective 2:</b> Maintain or restore: (1) the geomorphic and biological characteristics of special aquatic features, including lakes, meadows, bogs, fens, wetlands, vernal pools, springs; (2) streams, including in stream flows; and (3) hydrologic connectivity both within and between watersheds to provide for the habitat needs of aquatic-dependent species.                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>Maintain and restore the hydrologic connectivity of streams, meadows, wetlands, and other special aquatic features by identifying roads and trails that intercept, divert, or disrupt natural surface and subsurface water flow paths. Implement corrective actions where necessary to restore connectivity.</p>                                                                                                                                                                                | <ul style="list-style-type: none"> <li>• Prepare Hydrology Report.</li> <li>• Delineate the 2-year and 100-year floodplain limits of the South Fork Tuolumne River and Thimbleberry Creek.</li> <li>• Prepare wetland delineation. Avoid any wetland impacts where possible.</li> <li>• With the exception of weirs, accessibility features and related shoreline retaining walls, construct no new permanent facilities within 2-year water surface line of the South Fork Tuolumne River.</li> <li>• Design repair of existing BTC structures to accommodate the 100-year water surface elevation as supported by Hydrology Report analysis.</li> <li>• Revegetate and/or reinforce channels to manage surface runoff from within the BTC.</li> <li>• Annually remove flashboards in the South Fork Tuolumne River.</li> </ul> <p>Law, code, or ordinance reference:</p> <ul style="list-style-type: none"> <li>• Clean Water Act: 33 U.S.C. §1251 et seq. (1972)</li> <li>• Section 1602 of California Fish and Game Code</li> <li>•</li> </ul> |
| <p>Ensure that culverts or other stream crossings do not create barriers to upstream or downstream passage for aquatic-dependent species. Locate water sites to avoid adverse effects to in stream flows and depletion of pool habitat. Where possible, maintain and restore the timing, variability, and duration of floodplain inundation and water table elevation in meadows, wetlands, and other special aquatic features.</p>                                                                | <ul style="list-style-type: none"> <li>• Culverts will be designed to ensure that they do not create barriers to upstream or downstream passage for aquatic dependent species.</li> <li>• Annually remove flashboards in the South Fork Tuolumne River.</li> </ul> <p>Law, code, or ordinance reference:</p> <ul style="list-style-type: none"> <li>• Clean Water Act: 33 U.S.C. §1251 et seq. (1972)</li> <li>• Section 1602 of California Fish and Game Code</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>Prior to activities that could adversely affect streams, determine if relevant stream characteristics are within the range of natural variability. If characteristics are outside the range of natural variability, implement mitigation measures and short-term restoration actions needed to prevent further declines or cause an upward trend in conditions. Evaluate required long-term restoration actions and implement them according to their status among other restoration needs.</p> | <ul style="list-style-type: none"> <li>• Prepare Hydrology Report.</li> <li>• Delineate the 2-year and 100-year floodplain limits of the South Fork Tuolumne River and Thimbleberry Creek.</li> <li>• With the exception of weirs, water intake, accessibility features, and related shoreline retaining walls, construct no new permanent facilities within 2-year floodplain limits of the South Fork Tuolumne River.</li> <li>• Design repair of existing BTC structures to accommodate the 100-year floodplain limits as supported by Hydrology Report analysis</li> <li>• Based on soil conditions, shade the waters of the South Fork Tuolumne River and Thimbleberry Creek and create wildlife corridors by planting, where feasible, riparian vegetation within the permit area.</li> </ul> <p>Law, code, or ordinance reference:</p> <ul style="list-style-type: none"> <li>• Clean Water Act: 33 U.S.C. §1251 et seq. (1972)</li> <li>• Section 1602 of California Fish and Game Code</li> </ul>                                         |

**TABLE A-1 RIPARIAN CONSERVATION OBJECTIVES AND MANAGEMENT REQUIREMENTS FOR PLANNING AND CONSTRUCTION**

| Standards and Guidelines                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Alternative 1 (Proposed Action) Management Requirements and References                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <b>Riparian Conservation Objective 2 (cont.)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>Prevent disturbance to stream banks and natural lake and pond shorelines caused by resource activities (for example, livestock, off-highway vehicles, and dispersed recreation) from exceeding 20 percent of stream reach or 20 percent of natural lake and pond shorelines. Disturbance includes bank sloughing, chiseling, trampling, and other means of exposing bare soil or cutting plant roots. This standard does not apply to developed recreation sites and sites authorized under Special Use Permits.</p> | <ul style="list-style-type: none"> <li>• Although this does not apply to developed recreation sites or Special Use Permit sites, employ comprehensive best management construction standards to avoid or minimize disturbance to stream banks during construction periods including:                             <ul style="list-style-type: none"> <li>– Delineation or an erection of construction exclusion fencing</li> <li>– Preparation and implementation of an Erosion Control Plan Erosion Control Plan (USDA 2011) / Storm Water Pollution Plan (SWPPP). The SWPPP shall be prepared by a Qualified SWPPP Developer (QSD) and managed on-site by a Qualified SWPPP Practitioner (QSP) to ensure implementation of appropriate Best Management Practices for minimizing potential erosion and sedimentation within the project area during ground disturbing construction. These measures include, as appropriate to the site conditions: conducting major site grading and underground utility construction activities during the dry season (April 15 - October 31); using dikes, basins, ditches, straw, erosion control fabric and other temporary measures (e.g., water bars, fiber rolls) as catchments for source pollutants.</li> </ul> </li> <li>• Reconstruct/install permanent engineered stone containment walls along the edge of Kiddie Beach, Swimming Area and Island to replace existing unreinforced stone and rubble walls to minimize decomposed granite and silt runoff into the river from river access and related beach activities.</li> <li>• Seasonally remove decomposed granite beach material to a designated upland area, cover, and stabilize from winter snow and rains to avoid material migrating into the river.</li> <li>• Obtain Section 404 permit from COE.</li> <li>• Obtain stream alteration permits from CDFW.</li> </ul> <p>Law, code, or ordinance reference:</p> <ul style="list-style-type: none"> <li>• Clean Water Act: 33 U.S.C. §1251 et seq. (1972)</li> <li>• California Safe Drinking Water Act. Health And Safety Code, Section 116270-116293</li> <li>• Section 1602 of California Fish and Game Code</li> <li>• Sections 5650-5656 of California Fish and Game Code</li> </ul> |
| <p>Cooperate with State and Federal agencies to develop streambank disturbance standards for threatened, endangered, and sensitive species. Use the regional stream bank assessment protocol. Implement corrective action where disturbance limits have been exceeded.</p>                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>• Determine presence of threatened, endangered and sensitive species through:                             <ul style="list-style-type: none"> <li>– Aquatic and terrestrial wildlife biological evaluations (BEs)</li> <li>– Aquatic and terrestrial wildlife biological assessments (BAs) for federal threatened and endangered species</li> <li>– Plant biological evaluations</li> <li>– Statement regarding migratory bird species</li> </ul> </li> </ul> <p>Law, code, or ordinance reference:</p> <ul style="list-style-type: none"> <li>• Clean Water Act: 33 U.S.C. §1251 et seq. (1972)</li> <li>• Section 1602 of California Fish and Game Code</li> <li>• 6 U.S. Code Chapter 35: Endangered Species Act</li> <li>• State of California, Fish and Game Code, Section 2080-2085. Endangered Species Act.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>At either the landscape or project-scale, determine if the age class, structural diversity, composition, and cover of riparian vegetation are within the range of natural variability for the vegetative community. If conditions are outside the range of natural variability, consider implementing mitigation and/or restoration actions that will result in an</p>                                                                                                                                               | <ul style="list-style-type: none"> <li>• Determine age class, structural diversity, composition, and cover of riparian vegetation through plant biological evaluations.</li> <li>• Identify parameters for riparian revegetation program.</li> <li>• Prepare and implement a riparian / revegetation design.</li> </ul> <p>Other references</p> <ul style="list-style-type: none"> <li>• FSH 2509.22, 12.51 Exhibit 04, BMP 5.4 - Revegetation of Surface-disturbed Areas</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

**TABLE A-1 RIPARIAN CONSERVATION OBJECTIVES AND MANAGEMENT REQUIREMENTS FOR PLANNING AND CONSTRUCTION**

| Standards and Guidelines                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Alternative 1 (Proposed Action) Management Requirements and References                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <b>Riparian Conservation Objective 2 (cont.)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| upward trend. Actions could include restoration of aspen or other riparian vegetation where conifer encroachment is identified as a problem.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Cooperate with Federal, Tribal, State and local governments to secure in stream flows needed to maintain, recover, and restore riparian resources, channel conditions, and aquatic habitat. Maintain in stream flows to protect aquatic systems to which species are uniquely adapted. Minimize the effects of stream diversions or other flow modifications from hydroelectric projects on threatened, endangered, and sensitive species.                                                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>• Obtain stream alteration permits from CDFW.</li> <li>• Report annual water use.</li> </ul> Law, code, or ordinance reference: <ul style="list-style-type: none"> <li>• Section 1602, California Fish and Game Code</li> <li>• State of California, California Code of Regulations State Water Resources Control Board</li> </ul>                                                                                                                                                                                                                                                                                                                                                               |
| <b>Riparian Conservation Objective 3:</b> Ensure a renewable supply of large down logs that: (1) can reach the stream channel and (2) provide suitable habitat within and adjacent to the RCA.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Determine if the level of coarse large woody debris (CWD) is within the range of natural variability in terms of frequency and distribution and is sufficient to sustain stream channel physical complexity and stability. Ensure proposed management activities move conditions toward the range of natural variability.                                                                                                                                                                                                                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>• Consult with Forest Service about allowing downed logs in the stream channel downstream from weirs to remain.</li> </ul> Law, code, or ordinance reference: <ul style="list-style-type: none"> <li>• Section 1602, California Fish and Game Code</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Riparian Conservation Objective 4:</b> Ensure that management activities, including fuels reduction actions, within RCAs and CARs enhance or maintain physical and biological characteristics associated with aquatic- and riparian-dependent species.                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Use screening devices for water drafting pumps. (Fire suppression activities are exempt during initial attack.) Use pumps with low entry velocity to minimize removal of aquatic species, including juvenile fish, amphibian egg masses and tadpoles, from aquatic habitats.                                                                                                                                                                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>• Based on results of Aquatic Technical Report, include screens on BTC water supply pump as necessary.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Design prescribed fire treatments to minimize disturbance of ground cover and riparian vegetation in RCAs. In burn plans for project areas that include, or are adjacent to RCAs, identify mitigation measures to minimize the spread of fire into riparian vegetation. In determining which mitigation measures to adopt, weigh the potential harm of mitigation measures, for example fire lines, against the risks and benefits of prescribed fire entering riparian vegetation. Strategies should recognize the role of fire in ecosystem function and identify those instances where fire suppression or fuel Management Requirement could be damaging to habitat or long-term function of the riparian community. | <ul style="list-style-type: none"> <li>• Prepare a long-term fuel management program to include, but not be limited to:                             <ul style="list-style-type: none"> <li>– Development and maintenance of upland fuel breaks around perimeter of the BTC</li> <li>– Staff and camper education.</li> </ul> </li> <li>• Maintain or provide ground cover (e.g., maintain post-fire conifer needle cast; provide straw, wood chips, felled or masticated small burned trees within 100 feet of perennial and intermittent streams and SAFs to the maximum extent.</li> </ul> Law, code, or ordinance reference: <ul style="list-style-type: none"> <li>• Section 4291-4299, California Public Resources Code</li> </ul> |



**TABLE A-1 RIPARIAN CONSERVATION OBJECTIVES AND MANAGEMENT REQUIREMENTS FOR PLANNING AND CONSTRUCTION**

| Standards and Guidelines                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Alternative 1 (Proposed Action)<br>Management Requirements and References                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <b>Riparian Conservation Objective 4 (cont.)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>Post-wildfire management activities in RCAs and CARs should emphasize enhancing native vegetation cover, stabilizing channels by non-structural means, minimizing adverse effects from the existing road network, and carrying out activities identified in landscape analyses. Post-wildfire operations shall minimize the exposure of bare soil.</p>                                                                                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>• Prepare revegetation plan emphasizing riparian corridor vegetation and upland vegetation for erosion and sediment transport control, channel stabilization, habitat corridor and other purposes to include:                             <ul style="list-style-type: none"> <li>– Restoration and enhancement emphasis of a white alder riparian forest along the South Fork Tuolumne River.</li> <li>– General riparian and nearby upland revegetation up to 100 feet from channel banks to stabilize banks and enhance shade canopy along the South Fork Tuolumne River, Thimbleberry Creek and selected drainage channels.</li> <li>– Early to mid-seral Sierran mixed conifer forest in upland areas of the BTC.</li> </ul> </li> <li>• Stabilize slopes using non-structural controls to reduce erosion to terminate head cuts and side cuts along the river, Thimbleberry Creek and drainage channels</li> <li>• Restrict pedestrian access to designated access routes with bridges across all drainage channel crossings and access control barriers.</li> <li>• Use permeable materials for vehicular and pedestrian access routes and construct infiltration trench stabilizing drainage ditches to limit stormwater runoff and encourage nearby vegetation growth.</li> <li>• Repair/replace undercut or failing walls with engineered stone retaining walls (above).</li> <li>• Perform major site grading and underground utility construction activities during dry periods, stabilize all disturbed soils as soon as possible, develop, and implement an Erosion Control / Stormwater Pollution Prevention Plan (SWPPP).</li> </ul> <p>Law, code, or ordinance reference:</p> <ul style="list-style-type: none"> <li>• Clean Water Act: 33 U.S.C. §1251 et seq. (1972)</li> <li>• Section 1602, California Fish and Game Code.</li> <li>• Division 7, Chapter 7, California Water Code</li> </ul> <p>Other references:</p> <ul style="list-style-type: none"> <li>• Best Management Practices (BMPs) in accordance with the Regional Water Quality Management Plan (USDA 2011) and the National BMPs for Water Quality Management on National Forest System Lands (USDA 2012)</li> <li>• FSH 2509.22,12.51 Exhibit 04, BMP 5.4 - Revegetation of Surface-Disturbed Areas</li> </ul> |
| <p>Allow hazard tree removal within RCAs or CARs. Allow mechanical ground disturbing fuels treatments; salvage harvest or commercial fuel wood cutting within RCAs or CARs when the activity is consistent with RCOs. Utilize low ground pressure equipment, helicopters, over the snow logging, or other non-ground disturbing actions to operate off of existing roads when needed to achieve RCOs. Ensure that existing roads, landings, and skid trails meet Best Management Practices. Minimize the construction of new skid trails or roads for access into RCAs for fuel treatments, salvage harvest, commercial fuel wood cutting, or hazard tree removal.</p> | <ul style="list-style-type: none"> <li>• Evaluate standing trees prior to camp reconstruction activities.</li> <li>• Follow Forest Plan S&amp;Gs while removing any standing hazard trees during implementation.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Riparian Conservation Objective 4 (cont.)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>As appropriate, assess and document aquatic conditions following the Regional</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <ul style="list-style-type: none"> <li>• Prepare Aquatic Assessment Report.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

**TABLE A-1 RIPARIAN CONSERVATION OBJECTIVES AND MANAGEMENT REQUIREMENTS FOR PLANNING AND CONSTRUCTION**

| Standards and Guidelines                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Alternative 1 (Proposed Action) Management Requirements and References                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| Stream Condition Inventory protocol prior to implementing ground disturbing activities within suitable habitat for California red-legged frog, foothill yellow-legged frog, western pond turtle, and trout.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| At the project level, evaluate and consider actions to ensure consistency with standards and guidelines or desired conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <ul style="list-style-type: none"> <li>• Prepare Aquatic Assessment Report.</li> <li>• Prepare Hydrology Report.</li> <li>• Prepare a Post-Fire Landscape Analysis and Revegetation report identifying:                             <ul style="list-style-type: none"> <li>– Existing conditions that degrade water quality or habitat for aquatic and riparian-dependent species.</li> <li>– Reconstruction standards, guidelines, and desired conditions.</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Riparian Conservation Objective 5:</b> Preserve, restore, or enhance special aquatic features, such as meadows, lakes, ponds, bogs, fens, and wetlands, to provide the ecological conditions and processes needed to recover or enhance the viability of species that rely on these areas.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Prohibit or mitigate ground-disturbing activities that adversely affect hydrologic processes that maintain water flow, water quality, or water temperature critical to sustaining bog and fen ecosystems and plant species that depend on these ecosystems. During project analysis, survey, map, and develop measures to protect bogs and fens from such activities as trampling by livestock, pack stock, humans, and wheeled vehicles. Criteria for defining bogs and fens include, but are not limited to, presence of: (1) sphagnum moss ( <i>Sphagnum</i> spp.), (2) mosses belonging to the genus <i>Meesia</i> , and (3) sundew ( <i>Drosera</i> spp.) Complete initial plant inventories of bogs and fens within active grazing allotments prior to re-issuing permits. | <ul style="list-style-type: none"> <li>• Use permeable pavement and materials for all circulation systems where feasible.</li> <li>• Reevaluate based on plant biological evaluations.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Riparian Conservation Objective 6:</b> Identify and implement restoration actions to maintain, restore or enhance water quality and maintain, restore, or enhance habitat for riparian and aquatic species.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Recommend restoration practices in: (1) areas with compaction in excess of soil quality standards, (2) areas with lowered water tables, or (3) areas that are either actively down cutting or that have historic gullies. Identify other management practices, for example, road building, recreational use, grazing, and timber harvests that may be contributing to the observed degradation.                                                                                                                                                                                                                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>• Install erosion control measures such as straw wattles on 10 foot intervals to reduce runoff velocities in riparian areas; re-vegetate riparian corridor (channel banks and areas within 100 feet of channel banks)</li> <li>• Develop and implement a revegetation plan within riparian conservation area to stabilize banks and enhance shade canopy along the river, Thimbleberry Creek and drainage channels.</li> <li>• Emphasize restoration and enhancement of a white alder riparian forest.</li> <li>• Restrict pedestrian access to designated paths (with channel crossings) to limit damage to vegetation.</li> <li>• Use permeable surface materials where feasible for all vehicular and pedestrian routes of travel in all BTC areas.</li> <li>• Develop and implement a revegetation plan within the burned areas of the Camp and outside riparian corridors for erosion control, channel stabilization, habitat corridor and other purposes. Emphasize uneven age mid-seral Sierran mixed conifer forest.</li> </ul> |
| <b>Riparian Conservation Objective 6 (cont.)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>• Stabilize slopes to reduce erosion to terminate head cuts and side cuts along the River, Thimbleberry Creek and drainage channels.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

**TABLE A-1 RIPARIAN CONSERVATION OBJECTIVES AND MANAGEMENT REQUIREMENTS FOR PLANNING AND CONSTRUCTION**

| Standards and Guidelines | Alternative 1 (Proposed Action)<br>Management Requirements and References                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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|                          | <ul style="list-style-type: none"> <li>• Seasonally remove decomposed granite to a designated upland area, cover, and stabilize from winter snow and rains to avoid beach-related decomposed granite that may migrate into the river.</li> <li>• Where consistent with the Hydrology Analysis, repair/replace undercut or failing walls with engineered stone retaining walls.</li> <li>• Reconstruct/install permanent engineered stone containment walls along the edge of Kiddie Beach, Swimming Area and Island to reduce erosion.</li> <li>• Perform rough grading and mainline utility trenching construction activities during dry periods, stabilize all disturbed soils as soon as possible, develop and implement an Erosion Control / Stormwater Pollution Prevention Plan (SWPPP).</li> <li>• Develop and implement a revegetation plan within riparian corridor and up to 100 feet from channel banks to stabilize banks and enhance shade canopy along the River, Thimbleberry Creek and drainage channels</li> </ul> <p>Other references:</p> <ul style="list-style-type: none"> <li>• Best Management Practices (BMPs) in accordance with the Regional Water Quality Management Plan (USDA 2011) and the National BMPs for Water Quality Management on National Forest System Lands (USDA 2012)</li> <li>• FSH 2509.22, 12.51 Exhibit 04, BMP 5.4 - Revegetation of Surface-disturbed Areas</li> </ul> |

TABLE A-2 BEST MANAGEMENT PRACTICES

| Management Requirements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | BMPs/Forest Plan <sup>2</sup> /Locations                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <p><b>Erosion Control Plan</b><br/>The following applies to the overall construction program.</p> <ul style="list-style-type: none"> <li>- Prepare and implement a project area Erosion Control Plan (USDA 2011) and Storm Water Pollution Plan (SWPPP) approved by the Forest Supervisor and Regional Water Quality Control Board prior to the commencement of any ground-disturbing project activities.</li> <li>- Prepare a BMP checklist before implementation. Identified BMPs to apply to all construction activities.</li> <li>- The Erosion Control Plan / SWPPP shall be prepared by a Qualified SWPPP Developer (QSD) and managed on-site by a Qualified SWPPP Practitioner (QSP) to ensure implementation of appropriate Best Management Practices for minimizing potential erosion and sedimentation within the project area during construction.</li> </ul> | <p><b>Regional BMPs</b><br/>1-13 Erosion Prevention and Control Measures During Operations<br/>2.13 Erosion Control Plans (construction activities)</p> <p><b>National Core BMPs</b><br/>Veg-2 Erosion Prevention and Control</p> <p><b>Forest Plan S&amp;Gs</b><br/>60 Water Quality Management (18-A) 190 (RCO 4)</p> <p><b>Locations:</b> Applicable to all areas where construction-related ground-disturbing activities occur and ground areas affected by operations.</p> | <p><b>Regional BMPs</b><br/>1.13 Erosion Prevention and Control Measures During Operations<br/>2.13 Erosion Control Plans (construction activities)</p> <p><b>National Core BMPs</b><br/>Veg-2 Erosion Prevention and Control</p> <p><b>Forest Plan S&amp;Gs</b><br/>60 Water Quality Management (18-A) 190 (RCO 4)</p> <p><b>Locations:</b> Applicable to all areas where ground-disturbing activities are related to facility removal.</p> |
| <p><b>Facilities within a Floodplains</b></p> <ul style="list-style-type: none"> <li>- Conduct a separate floodplain hazard analysis and evaluation.</li> <li>- Allow repair of existing overnight camping facilities within the 100-year floodplain of the South Fork Tuolumne River only if finished floor elevations are above the floodplain.</li> <li>- Prepare a Camp Evacuation Plan that incorporates protocols and procedures for evacuation in response to storm and snowmelt events that may lead to high water flows.</li> </ul>                                                                                                                                                                                                                                                                                                                             | <p><b>Regional BMPs</b><br/>1.8 Streamside Zone Designation<br/>1.19 Stream Course and Aquatic Protection<br/>7.2 Conduct Floodplain Hazard Analysis and Evaluation</p>                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>Construction and Operations in Riparian Conservation Areas</b><br/>Refer to Table A-2.<br/>Camp facilities are within the South Fork Tuolumne River RCA. Identified BMPs apply to all construction and operation activities including: Utility and infrastructure improvements; vehicular access and parking area development; pedestrian circulation, sports courts, day use areas, and structures.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p><b>Regional BMPs</b><br/>1-8 Streamside Zone Designation<br/>1-19 Stream Course and Aquatic Protection<br/>2.2 General Guidelines for the Location and Design of Roads<br/>2.3 Road Construction and Reconstruction<br/>2.10 Parking and Staging Areas<br/>2.11 Equipment Refueling and Servicing<br/>4.9 Protecting Water Quality within Developed Recreation Sites<br/>5.1 Soil-disturbing Treatments on the Contour</p>                                                   | <p><b>Regional BMPs</b><br/>1-8 Streamside Zone Designation<br/>1-19 Stream Course and Aquatic Protection<br/>2.3 Road Construction and Reconstruction<br/>2.10 Parking and Staging Areas<br/>2.11 Equipment Refueling and Servicing<br/>4.9 Protecting Water Quality within Developed Recreation Sites<br/>5.1 Soil-disturbing Treatments on the Contour<br/>5.4 Revegetation of Surface-disturbed Areas</p>                                |

<sup>2</sup> Forest Plan S&Gs indicate page number from Forest Plan Direction (USDA 2017).

TABLE A-2 BEST MANAGEMENT PRACTICES

| Management Requirements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | BMPs/Forest Plan <sup>2</sup> /Locations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 5.4 Revegetation of Surface-disturbed Areas<br>5-5 Disposal of Organic Debris<br>5.6 Soil Moisture Limitations for Tractor Operations<br>7-3 Protection of Wetlands<br>7.5 Control of Activities under Special Use Permit<br><b>National Core BMPs</b><br>Aq Eco-2 Operations in Aquatic Ecosystems<br>AqEco-4 Stream Channels and Shorelines<br>Plan-3 Aquatic Management Zone Planning<br>Veg-1 Vegetation Management Planning<br>Veg-2 Erosion Prevention and Control<br>Veg-3 Aquatic Management Zones<br>WatUses-5 Dams and Impoundments<br><b>Forest Plan S&amp;Gs</b><br>60 Water Quality Management (18-A)<br>189 (RCO 1)<br>189 (RCO 2)<br>190 (RCO 3)<br>190 (RCO 4)<br>191 (RCO 5)<br>191 (RCO 6)<br><b>Locations:</b> All Camp areas including stream and drainage restoration areas. | 5-5 Disposal of Organic Debris<br>5.6 Soil Moisture Limitations for Tractor Operations<br>7-3 Protection of Wetlands<br>7.5 Control of Activities under Special Use Permit<br><b>National Core BMPs</b><br>Aq Eco-2 Operations in Aquatic Ecosystems<br>AqEco-4 Stream Channels and Shorelines<br>Plan-3 Aquatic Management Zone Planning<br>Veg-1 Vegetation Management Planning<br>Veg-2 Erosion Prevention and Control<br>Veg-3 Aquatic Management Zones<br><b>Forest Plan S&amp;Gs</b><br>60 Water Quality Management (18-A)<br>189 (RCO 1)<br>189 (RCO 2)<br>190 (RCO 3)<br>190 (RCO 4)<br>191 (RCO 5)<br>191 (RCO 6)<br><b>Locations:</b> All Camp areas where facilities will be removed and contoured. |
| <b>Stream Crossings</b><br><b>Design of New or Reconstructed Crossings</b><br><ul style="list-style-type: none"> <li>- Design permanent stream crossings (pedestrian and utility bridge; Camp access routes of travel and paths) to pass the 100-year flood flow; armor to withstand design flows and provide desired passage of fish and other aquatic organisms.</li> <li>- Locate and design crossings to minimize disturbance to the water body. Use structures appropriate to the site conditions and traffic. Favor armored fords for streams where pedestrian traffic is seasonal or temporary, and where the ford design maintains the channel pattern, profile and dimension.</li> <li>- Gradually remove any temporary dams or water diversion features needed to constructed bridge footings when construction is complete so that released</li> </ul> | <b>Regional BMPs</b><br>2.8 Stream Crossings<br>2.13 Erosion Control Plans (roads and other activities)<br><b>National Core BMPs</b><br>AqEco-2 Operations in Aquatic Ecosystems<br>Road-7 Stream Crossings<br>Veg-2 Erosion Prevention and Control<br><b>Forest Plan S&amp;Gs</b><br>60 Water Quality Management (18-A)<br>189 (RCO 2)<br>190 (RCO 4)<br><b>Locations:</b> South Fork Tuolumne River and all stream crossings on constructed, reconstructed and maintained Camp drives, accessible paths of travel, and trails.                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

TABLE A-2 BEST MANAGEMENT PRACTICES

| Management Requirements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | BMPs/Forest Plan <sup>2</sup> /Locations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p>impoundments do not discharge sediment into the stream flow.</p> <ul style="list-style-type: none"> <li>- Install stream crossings according to project specifications and drawings. Design should sustain streambed and bank resiliency.</li> <li>- Construct diversion prevention dips to accommodate overtopping of runoff if diversion potential exists. Locate diversion prevention dips down slope of the crossing rather than directly over crossing fill; armor diversion prevention dips based on soil characteristics and risk. Install cross drains (e.g., rolling dips; water bars) to hydrologically disconnect the drive or path above the crossing and to dissipate concentrated flows.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p><b>Construction, Reconstruction and Maintenance Operations</b></p> <ul style="list-style-type: none"> <li>- Do not store materials in stream channels</li> <li>- Keep excavated materials out of channels, floodplains, and wetland areas. Install silt fences or other sediment- and debris-retention barriers between the water body and construction material stockpiles and wastes. Dispose unsuitable material in approved waste areas outside of the RCA.</li> <li>- Inspect and clean equipment; remove external oil, grease, dirt and mud and repair leaks prior to unloading at site. Inspect equipment daily and correct identified problems before entering streams or areas that drain directly to water bodies. Remove all dirt and plant parts to ensure that noxious weeds and aquatic invasive species are not brought to the site.</li> <li>- Remove all project debris from the stream in a manner that will cause the least disturbance.</li> <li>- Minimize streambank and riparian area excavation during construction. Stabilize adjacent disturbed areas using mulch, retaining structures, and or mechanical stabilization materials.</li> <li>- Ensure imported fill materials meet specifications, and are free of toxins and invasive species.</li> <li>- Divert or dewater stream flow for all live streams or standing water bodies during crossing installation and invasive maintenance.</li> <li>- Seasonally remove decomposed granite to a designated upland area, manage material that may migrate into the swimming area with seasonal installation/removal.</li> <li>- Prepare a solid waste management-facility</li> </ul> | <p><b>Regional BMPs</b></p> <ul style="list-style-type: none"> <li>2.8 Stream Crossings</li> <li>2.13 Erosion Control Plans</li> <li>4.4 Control of Sanitation Facilities</li> <li>4.5 Control of Solid Waste Disposal</li> <li>4.6 Assuring that Organizational Camps Have Proper Sanitation and Water Supply Facilities</li> <li>4.9 Protecting Water Quality within Developed and Dispersed Recreation Areas</li> </ul> <p><b>National Core BMPs</b></p> <ul style="list-style-type: none"> <li>AqEco-2 Operations in Aquatic Ecosystems</li> <li>Road-7 Stream Crossings</li> <li>Veg-2 Erosion Prevention and Control</li> </ul> <p><b>Forest Plan S&amp;Gs</b></p> <ul style="list-style-type: none"> <li>59 Interpretive Services Planning (10-L)</li> <li>59 Interpretive Services Management (10-M)</li> <li>60 Water Quality Management (18-A)</li> <li>189 (RCO 2)</li> <li>191 (RCO 5)</li> </ul> <p><b>Locations:</b> South Fork Tuolumne River and all stream crossings on constructed, reconstructed and maintained Camp drives, accessible paths of travel, and trails.</p> | <p><b>Regional BMPs</b></p> <ul style="list-style-type: none"> <li>2-8 Stream Crossings</li> <li>2-13 Erosion Control Plans</li> </ul> <p><b>National Core BMPs</b></p> <ul style="list-style-type: none"> <li>AqEco-2 Operations in Aquatic Ecosystems</li> <li>Veg-2 Erosion Prevention and Control</li> </ul> <p><b>Forest Plan S&amp;Gs</b></p> <ul style="list-style-type: none"> <li>60 Water Quality Management (18-A)</li> <li>189 (RCO 2)</li> <li>190 (RCO 4)</li> <li>191 (RCO 5)</li> </ul> <p><b>Locations:</b> South Fork Tuolumne River and all stream crossings in area where facilities will be removed.</p> |

TABLE A-2 BEST MANAGEMENT PRACTICES

| Management Requirements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | BMPs/Forest Plan <sup>2</sup> /Locations                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                      |
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| and recycling program.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p><b>Water Source</b></p> <ul style="list-style-type: none"> <li>- For water drafting on fish-bearing streams: do not exceed 350 gallons per minute for stream flow greater than or equal to 4.0 cubic feet per second (cfs); do not exceed 20% of surface flows below 4.0 cfs; and, cease drafting when bypass surface flow drops below 1.5 cfs.</li> <li>- Do not allow water drafting from streams by more than one truck at a time.</li> <li>- Gradually remove temporary dams when operations are complete so that released impoundments do not discharge sediment into the stream flow.</li> <li>- When diverting water from streams, maintain bypass flows that ensure continuous surface flow in downstream reaches, and keep habitat in downstream reaches in good condition.</li> <li>- Locate approaches as close to perpendicular as possible to prevent stream bank excavation.</li> <li>- Treat approaches and drafting pads to prevent sediment production and delivery to a watercourse or waterhole. Armor approaches as necessary from the end of the approach nearest a stream for a minimum of 50 feet, or to the nearest drainage structure (e.g., waterbar or rolling dip) or point where road drainage does not drain toward the stream.</li> <li>- Armor areas subject to high floods to prevent erosion and sediment delivery to water courses.</li> <li>- Install effective erosion control devices (e.g., gravel berms or water bars) where overflow runoff from water trucks or storage tanks may enter the stream,</li> <li>- During construction, check all water-drafting vehicles daily and repair as necessary to prevent leaks of petroleum products from entering RCAs. Water-drafting vehicles shall contain petroleum-absorbent pads, which are placed under vehicles before drafting. Water-drafting vehicles shall contain petroleum spill kits. Dispose of absorbent pads according to the Hazardous Response Plan.</li> </ul> | <p><b>Regional BMPs</b></p> <p>2.5 Water Source Development and Utilization</p> <p>2.13 Erosion Control Plans</p> <p><b>National Core BMPs</b></p> <p>WatUses-3 Administrative Water Developments</p> <p>AqEco-2 Operations in Aquatic Ecosystems</p> <p><b>Forest Plan S&amp;Gs</b></p> <p>189 (RCO 2)</p> <p>190 (RCO 4)</p> <p>190 (RCO 4)</p> <p><b>Locations:</b> all water drafting sites for construction and Camp operations</p> | <p><b>Regional BMPs</b></p> <p>2.5 Water Source Development and Utilization</p> <p>2.13 Erosion Control Plans</p> <p><b>National Core BMPs</b></p> <p>WatUses-3 Administrative Water Developments</p> <p>AqEco-2 Operations in Aquatic Ecosystems</p> <p><b>Forest Plan S&amp;Gs</b></p> <p>189 (RCO 2)</p> <p>190 (RCO 4)</p> <p>190 (RCO 4)</p> <p><b>Locations:</b> all water drafting sites.</p> |
| <p><b>Servicing, Refueling, and Cleaning Equipment and Parking/Staging Areas</b></p> <ul style="list-style-type: none"> <li>- Allow temporary refueling and servicing only at approved sites.</li> <li>- Rehabilitate temporary staging, parking, and refueling/servicing areas immediately following use.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p><b>Regional BMPs</b></p> <p>2.10 Parking and Staging Areas</p> <p>2.11 Equipment Refueling and Servicing</p> <p><b>National Core BMPs</b></p> <p>Road-9 Parking and Staging Areas</p>                                                                                                                                                                                                                                                 | <p><b>Regional BMPs</b></p> <p>2-10 Parking and Staging Areas</p> <p>2-11 Equipment Refueling and Servicing</p> <p><b>National Core BMPs</b></p> <p>Road-9 Parking and Staging Areas</p>                                                                                                                                                                                                             |

TABLE A-2 BEST MANAGEMENT PRACTICES

| Management Requirements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | BMPs/Forest Plan <sup>2</sup> /Locations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <ul style="list-style-type: none"> <li>- A Spill Prevention and Containment and Counter Measures (SPCC) plan is required where total oil products on site in above-ground storage tanks exceed 1320 gallons or where a single container exceeds 660 gallons. Review and ensure spill plans are up-to-date.</li> <li>- Report spills and initiate appropriate clean-up action in accordance with applicable State and Federal laws, rules and regulations. The Forest hazardous materials coordinator's name and phone number shall be available to Forest Service personnel who administer or manage activities utilizing petroleum-powered equipment.</li> <li>- Remove contaminated soil and other material from NFS lands and dispose of this material in a manner according to controlling regulations.</li> <li>- Install temporary wash sites only in areas where the water and residue can be adequately collected and either filtered on site or conveyed to an appropriate wastewater treatment facility.</li> </ul> | <p>Road-10 Equipment Refueling and Servicing<br/>Fac-7 Vehicle and Equipment Wash Water</p> <p><b>Forest Plan S&amp;Gs</b><br/>189 (RCO 1)</p> <p><b>Locations:</b> designated temporary construction refueling, servicing and cleaning sites and parking/staging areas</p>                                                                                                                                                                                                                                                                                                                                 | <p>Road-10 Equipment Refueling and Servicing<br/>Fac-7 Vehicle and Equipment Wash Water</p> <p><b>Forest Plan S&amp;Gs</b><br/>189 (RCO 1)</p> <p><b>Locations:</b> designated temporary construction refueling, servicing and cleaning sites and parking/staging areas</p>                                                                                                                                                                                                                                                                                                                                 |
| <p><b>Slope and Soil Moisture Limitations</b></p> <ul style="list-style-type: none"> <li>- Avoid all ground disturbing construction activities during wet winter months.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p><b>Regional BMPs</b><br/>5.6 Soil Moisture Limitations for Mechanical Equipment Operations</p> <p><b>National Core BMPs</b><br/>Veg-2 Erosion Prevention and Control</p> <p><b>Locations:</b> Throughout Camp construction area.</p>                                                                                                                                                                                                                                                                                                                                                                     | <p><b>Regional BMPs</b><br/>5-6 Soil Moisture Limitations for Mechanical Equipment Operations</p> <p><b>National Core BMPs</b><br/>Veg-2 Erosion Prevention and Control</p> <p><b>Locations:</b> Throughout Camp construction area.</p>                                                                                                                                                                                                                                                                                                                                                                     |
| <p><b>Vegetation</b></p> <ul style="list-style-type: none"> <li>- Hydromulch all disturbed lands and install other erosion control measures such as straw wattles at 10 foot on center.</li> <li>- Implement a revegetation plan for all areas disturbed by Camp construction and burned areas sufficient to achieve ROS and VQOs</li> <li>- Stabilize uphill side slopes to reduce erosion</li> <li>- Provide inlets, and energy dissipation at discharge points.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p><b>Regional BMPs</b><br/>1-13 Erosion Prevention and Control Measures During Operations<br/>5.1 Soil-disturbing Treatments on the Contour<br/>5.4 Revegetation of Surface-disturbed Areas<br/>5.5 Disposal of Organic Debris</p> <p><b>National Core BMPs</b><br/>Veg-1 Vegetation Management Planning<br/>Veg-2 Erosion Prevention and Control<br/>Veg-3 Aquatic Management Zones</p> <p><b>Forest Plan S&amp;Gs</b><br/>57 Soil Support Services (13-A)<br/>57 Soil Hydrologic Functions Soil Environmental Health (13-C)<br/>189 (RCO 1)</p> <p><b>Locations:</b> all graded and disturbed areas.</p> | <p><b>Regional BMPs</b><br/>1-13 Erosion Prevention and Control Measures During Operations<br/>5.1 Soil-disturbing Treatments on the Contour<br/>5.4 Revegetation of Surface-disturbed Areas<br/>5.5 Disposal of Organic Debris</p> <p><b>National Core BMPs</b><br/>Veg-1 Vegetation Management Planning<br/>Veg-2 Erosion Prevention and Control<br/>Veg-3 Aquatic Management Zones</p> <p><b>Forest Plan S&amp;Gs</b><br/>57 Soil Support Services (13-A)<br/>57 Soil Hydrologic Functions Soil Environmental Health (13-C)<br/>189 (RCO 1)</p> <p><b>Locations:</b> all graded and disturbed areas.</p> |



TABLE A-2 BEST MANAGEMENT PRACTICES

| Management Requirements                                                                                                                                                                                                                                                                                                                                                                                              | BMPs/Forest Plan <sup>2</sup> /Locations                                                                                                                                                    |                                                                                                                                                                     |
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|                                                                                                                                                                                                                                                                                                                                                                                                                      | Alternative 1<br>(Proposed Action)                                                                                                                                                          | Alternative 2<br>(Abandonment)                                                                                                                                      |
| <p><b>Water Quality Monitoring</b></p> <ul style="list-style-type: none"> <li>- Conduct implementation and effectiveness monitoring using the Best Management Practices Evaluation Program (BMPEP) (USDA 2002) and the National Core Monitoring Protocols (FS-990b) (USDA 2012).</li> <li>- Conduct project-level in-channel monitoring as required in the Water Quality Management Handbook (USDA 2011).</li> </ul> | <p><b>Regional BMPs</b></p> <p>7.6 Water Quality Monitoring</p> <p><b>Locations:</b> Monitoring locations at water draw location upstream from Camp use areas and downstream from Camp.</p> |                                                                                                                                                                     |
| <p><b>Employee Training and Visitor Education</b></p> <ul style="list-style-type: none"> <li>- Encourage staff and campers through the use of signs, pamphlets, and program contact to conduct their activities in a manner that will not degrade water quality.</li> </ul>                                                                                                                                          | <p><b>Regional BMPs</b></p> <p>7.6 Water Quality Monitoring</p>                                                                                                                             |                                                                                                                                                                     |
| <p><b>Cumulative Watershed Effects (CWE) Analysis</b></p> <ul style="list-style-type: none"> <li>- Conduct CWE analysis for the project.</li> </ul>                                                                                                                                                                                                                                                                  | <p><b>Regional BMPs</b></p> <p>7.8 Cumulative Off-Site Watershed Effects</p> <p><b>Locations:</b> All activities within the Camp area.</p>                                                  | <p><b>Regional BMPs</b></p> <p>7-8 Cumulative Off-Site Watershed Effects</p> <p><b>Locations:</b> All activities within areas where facilities will be removed.</p> |

**MITIGATION MONITORING AND REPORTING PROGRAM  
CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT**

**Parks, Recreation & Waterfront Department  
City of Berkeley**

**December 2018**

## MITIGATION MONITORING AND REPORTING PROGRAM CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT

### 1.0 INTRODUCTION

#### 1.1 Background

When adopting a Mitigated Negative Declaration, Public Resources Code section 21081.6(a) requires a Lead Agency adopt a monitoring or reporting program. The Lead Agency must adopt the monitoring or reporting program as a condition of project approval to mitigate significant effects on the environment. The monitoring program must be designed to ensure compliance during project implementation to mitigate or avoid significant environmental effects.

#### 1.2 Purpose

This Mitigation Monitoring and Reporting Program (MMRP) is designed to serve as a tool to manage the evaluation of project compliance with mitigation measures identified in the *Mitigated Negative Declaration/Initial Study for the City of Berkeley Tuolumne Camp Permit (46690) Project* (MND/IS). This MMRP will be used by the City of Berkeley (City) to verify inclusion of required project design features and implementation of mitigation measures. The MMRP provides a summary of mitigation implementation for the City, other public agencies and the community to determine compliance with the implementation of the mitigation measures identified in the MND/IS.

### 2.0 MITIGATION MONITORING AND REPORTING PROGRAM

The MMRP identifies Project mitigation measures and their implementation to document compliance. The City shall implement the MMRP as follows:

- City is responsible for coordination of the MMRP with all responsible parties.
- City will include all appropriate construction-related mitigation requirements in construction documents (plans and specifications).
- City has overall responsibility for confirming compliance with all mitigation measures identified in the MMRP. Agencies and consultants assigned responsibility for implementing specific mitigation measures shall provide mitigation confirmation, including copies of specified documents, and submit to Liza McNulty, Program Manager. Email: [lmcnulty@cityofberkeley.info](mailto:lmcnulty@cityofberkeley.info).
- The MMRP will be available for public review at the Parks Recreation & Waterfront: 2180 Milvia Street, Third floor, Berkeley, CA 94704 and on the City website: <https://www.cityofberkeley.info>.

**CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT  
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| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | One-time or On-going                                                                        | Responsible for Implementation | Responsible for Verification                          | Form of Verification                                   | Comments/<br>Special instructions | Initials | Date |
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| <b>Prior to Final Design/Preparation of Construction Drawings</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                             |                                |                                                       |                                                        |                                   |          |      |
| <p><b>AES-1:</b> In order to meet a near-term Visual Quality Objective of Modification, the BTC Facilities shall be designed to follow the <i>Design Narrative/Built Environmental Image Guidelines</i> (2M Associates 2017) for the project. Design documents (90 percent completion) will be submitted to the Forest Service for review and comment for consistency with the guidelines.</p>                                                                                                                                                                                                                                                                                       | One-time for each structure, revegetation area, and above-ground infrastructure facilities. | Architect                      | Forest Service<br>City of Berkeley                    | Construction drawings                                  |                                   |          |      |
| <p><b>AES-2:</b> In order to screen project facilities and meet a Visual Quality Objective of Partial Retention a revegetation plan for the Hardin Flat road corridor, burned areas, and areas disturbed by construction will be prepared and implemented emphasizing:</p> <ul style="list-style-type: none"> <li>• Feathered screening between Hardin Flat Road and BTC facilities.</li> <li>• Dense riparian vegetation and conifers shading of the river, Thimbleberry Creek, and related drainages.</li> </ul> <p>Planting program design documents (90 percent completion) will be submitted to the Forest Service for review and comment for consistency Forest standards.</p> | On-going until all planting areas identified in the revegetation plan are completed.        | Landscape Architect            | Forest Service<br>City of Berkeley                    | Revegetation Plan<br>Planting program design documents |                                   |          |      |
| <p><b>AES-3:</b> To minimize visibility and to reduce the potential impacts of lighting as seen from Hardin Flat Road:</p> <ul style="list-style-type: none"> <li>• All outdoor lighting shall be dark sky-compliant and consistent with California Green Building Standards Code Section 5.106.8 Light Pollution Reduction.</li> </ul>                                                                                                                                                                                                                                                                                                                                              | One-time                                                                                    | Architect                      | Forest Service<br>Tuolumne County<br>City of Berkeley | Construction drawings                                  |                                   |          |      |

**CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT  
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| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                  | One-time or On-going                      | Responsible for Implementation | Responsible for Verification                          | Form of Verification                                                                               | Comments/<br>Special instructions | Initials | Date |
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| <b>Prior to Final Design/Preparation of Construction Drawings – continued</b>                                                                                                                                                                                                                                                                                                                                                                       |                                           |                                |                                                       |                                                                                                    |                                   |          |      |
| <b>AES-3 (cont.)</b> <ul style="list-style-type: none"> <li>All light fixtures shall include shrouds (either fixed or adjustable), other shielding, or be directed in such a way as to block direct light as seen from Hardin Flat Road.</li> <li>Lighting that is not required during nighttime hours shall be controlled by the use of timed switches and/or motion detector activation controls so lights are only on when necessary.</li> </ul> |                                           |                                |                                                       |                                                                                                    |                                   |          |      |
| <b>AES-4:</b> To minimize visibility and to reduce the potential impacts of glare as seen from Hardin Flat Road: <ul style="list-style-type: none"> <li>Structures, including roofs, shall use non-reflective, earth-toned materials that match the soil and vegetation colors of the backdrop characteristic landscape.</li> <li>All structure windows and doors shall use non-reflective glass.</li> </ul>                                        | One-time                                  | Architect                      | Forest Service<br>City of Berkeley                    | Construction drawings                                                                              |                                   |          |      |
| <b>GEO-1:</b> Detailed geotechnical investigations shall be performed prior to the design of all buildings and the pedestrian/utility bridge. Buildings and bridges shall be designed to withstand seismic and soil loads consistent with California Building Code.                                                                                                                                                                                 | One-time for each building and the bridge | Geo-technical Engineer         | Forest Service<br>Tuolumne County<br>City of Berkeley | Geotechnical Investigation Reports                                                                 |                                   |          |      |
| <b>HYDRO-1:</b> During detail design of BTC facilities and related site improvements, submit the US Army Corps of Engineers Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act permit applications and associated documentation to the Forest Service for review and comment.                                                                                                                                          | One-time                                  | City of Berkeley               | Forest Service                                        | Completed Section 404 application and Section 10 application and support reports and documentation |                                   |          |      |

**CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT  
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| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | One-time or On-going | Responsible for Implementation | Responsible for Verification                                                         | Form of Verification                                                                                                                                                                                                                               | Comments/<br>Special instructions | Initials | Date |
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| <b>Prior to Final Design/Preparation of Construction Drawings – continued</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                      |                                |                                                                                      |                                                                                                                                                                                                                                                    |                                   |          |      |
| <p><b>HYDRO-3:</b> During detail design of BTC facilities and related site improvements, submit permit applications and associated documentation for the following to Forest Service for review and comment:</p> <p>a. California Department of Fish and Wildlife (CDFW): Application, plans, and specifications for work to obtain a Stream Alteration Agreement pursuant to Fish and Game Code sections 1600 <i>et seq.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | One-time             | City of Berkeley               | Forest Service                                                                       | Completed California Fish and Game Code Section 1600 application, plans and specifications                                                                                                                                                         |                                   |          |      |
| <p><b>HYDRO-5:</b> During detail design of BTC facilities and related site improvements, submit permit applications and associated documentation for the following to Forest Service for review and comment:</p> <p>a. California Water Quality Control Board, Division of Drinking Water: Application, plans, and specifications for permit for surface water appropriation and treatment for drinking water under the Porter-Cologne Water Quality Control Act of 1975 and Safe Drinking Water Act (Pub. L. 93-523).</p> <p>b. Tuolumne County On-site Sewage Treatment and Disposal System Certification including percolation tests and soil profiles, system design plans and specifications (plot plan; grading plan; description of groundwater and soils; description of monitoring devices, system operation and function; and site evaluation and testing) necessary to obtain Certification of an on-site sewage treatment and disposal system pursuant to Tuolumne County Code Section 13.08.</p> | One-time             | City of Berkeley               | Forest Service<br>Tuolumne County<br>California Water Quality Control Board Region 5 | <p>Completed Drinking Water Quality application</p> <p>Completed Tuolumne County On-site Sewage Treatment and Disposal System Certification application</p> <p>Completed percolation tests, soil profiles and other required support documents</p> |                                   |          |      |

**CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT  
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| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | One-time or On-going                         | Responsible for Implementation | Responsible for Verification                            | Form of Verification                                                           | Comments/<br>Special instructions | Initials | Date |
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| <b>Prior to Final Design/Preparation of Construction Drawings – continued</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                              |                                |                                                         |                                                                                |                                   |          |      |
| <b>LUP-1:</b> Obtain confirmation from the Forest Service that the Project is consistent with the <i>Forest Plan Direction</i> prior to Camp construction.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | One-time                                     | City of Berkeley               | Forest Service                                          | Design documents<br>Construction Drawings<br>Grading Plan<br>Revegetation Plan |                                   |          |      |
| <b>Prior to Demolition and Construction</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                              |                                |                                                         |                                                                                |                                   |          |      |
| <p><b>AIR-1:</b> A construction-phase Dust Control Plan (DCP) shall be prepared prior to the start of any Project construction activity. The DCP shall include, at a minimum, all basic emission control measures listed below:</p> <p><i>Basic Control Measures</i></p> <ul style="list-style-type: none"> <li>• All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.</li> <li>• All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.</li> <li>• All land clearing, grubbing, scraping, excavation, land leveling, grading, cut &amp; fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.</li> </ul> | On-going throughout construction activities. | General Contractor             | Tuolumne County Air Pollution Control District (TCAPCD) | Dust Control Plan                                                              |                                   |          |      |

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| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | One-time or On-going | Responsible for Implementation | Responsible for Verification | Form of Verification | Comments/<br>Special instructions | Initials | Date |
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| <b>Prior to Demolition and Construction - continued</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                      |                                |                              |                      |                                   |          |      |
| <p><b>AIR-1 (cont.)</b></p> <ul style="list-style-type: none"> <li>• With the demolition of buildings, all exterior surfaces of the building shall be wetted during demolition.</li> <li>• When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.</li> <li>• All operations shall limit or expeditiously remove the accumulation of mud or dirt from Hardin Flat Road at the end of each workday. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions; use of blower devices is expressly forbidden.)</li> <li>• Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.</li> <li>• Any site with 150 or more vehicle trips per day shall prevent carryout and track-out.</li> </ul> <p><i>Enhanced Control Measures (as deemed necessary and appropriate by USFS)</i></p> <ul style="list-style-type: none"> <li>• Limit traffic speeds on unpaved roads to 15 mph.</li> </ul> |                      |                                |                              |                      |                                   |          |      |



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| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | One-time or On-going | Responsible for Implementation | Responsible for Verification                       | Form of Verification     | Comments/<br>Special instructions | Initials | Date |
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| <b>Prior to Demolition and Construction - continued</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                      |                                |                                                    |                          |                                   |          |      |
| <b>AIR-1 (cont.)</b> <ul style="list-style-type: none"> <li>• Install sandbags or other erosion control measures to prevent silt runoff to public roadways from areas with a slope greater than one percent.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                        |                      |                                |                                                    |                          |                                   |          |      |
| <i>Additional Control Measures (as deemed necessary and appropriate by USFS)</i> <ul style="list-style-type: none"> <li>• Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site.</li> <li>• Install wind breaks at windward side(s) of construction areas.</li> <li>• Suspend excavation and grading activity when winds exceed 20 mph, or when fugitive dust exiting the site exceeds the 20 percent opacity limit, regardless of wind speed.</li> <li>• Limit area subject to excavation, grading, and other construction activity at any one time.</li> </ul> |                      |                                |                                                    |                          |                                   |          |      |
| <b>AIR-2:</b> Acquire burn permits from the Tuolumne County Air Pollution Control District. The California Air Resources Board provides daily information on "burn" or "no burn" conditions. Burning shall be prohibited on "no burn" days. Design and implement burn plans to minimize particulate emissions. Notify the Groveland District Wildlife Biologist prior to pile burning to minimize disturbance to protected or sensitive species.                                                                                                                                                               | On-going             | City of Berkeley               | TCAPCD<br>Groveland District<br>Wildlife Biologist | Burn Permit<br>Burn Plan |                                   |          |      |

**CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT  
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| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                | One-time or On-going | Responsible for Implementation | Responsible for Verification       | Form of Verification                                           | Comments/ Special instructions                                                                   | Initials | Date |
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| <b>Prior to Demolition and Construction - continued</b>                                                                                                                                                                                                                                                                                                                           |                      |                                |                                    |                                                                |                                                                                                  |          |      |
| <b>BIO-1:</b> Conduct a pre-construction survey to identify if the western pond turtle are present within the construction areas.                                                                                                                                                                                                                                                 | One-time             | Qualified Biologist            | Forest Service Biologist           | Pre-construction survey report prepared by Qualified Biologist | Construction specifications shall incorporate pre-construction survey requirement                |          |      |
| <b>BIO-2:</b> BTC project construction workers shall be trained regarding the western pond turtle, including identification, habitat requirements, and the importance of minimizing physical disturbance to individuals during construction.                                                                                                                                      | One-time             | Qualified Biologist            | Forest Service City of Berkeley    | Training Class                                                 |                                                                                                  |          |      |
| <b>BIO-5:</b> Conduct a pre-construction plant survey the spring prior to Project construction. Flag and avoid new occurrences of sensitive plants. Notify the Groveland Ranger District Botanist to determine any additional measures.                                                                                                                                           | One-time             | Qualified Biologist            | Groveland Ranger District Botanist | Pre-construction survey report prepared by Qualified Biologist | Construction specifications shall incorporate pre-construction survey requirement and mitigation |          |      |
| <b>BIO-6:</b> During breeding season (February 15 to September 15) conduct pre-construction nest surveys for migratory birds, California spotted owls, and northern goshawks within ¼ mile of construction activities. If active nests are discovered, protective measures such as nest buffers or limited operations would be implemented in consultation with a USFS biologist. | One-time             | Qualified Biologist            | Forest Service Biologist           | Pre-construction survey report prepared by Qualified Biologist | Construction specifications shall incorporate pre-construction survey requirement and mitigation |          |      |
| <b>BIO-7:</b> Pre-activity surveys for roosting bats would be conducted at all suitable roost trees or structures to be removed by project activities. If any FSS bat species are discovered during the surveys, nest and roost trees would be protected unless the trees pose an imminent safety concern.                                                                        | One-time             | Qualified Biologist            | Forest Service Biologist           | Pre-construction survey report prepared by Qualified Biologist | Construction specifications shall incorporate pre-construction survey requirement and mitigation |          |      |

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| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                             | One-time or On-going                                   | Responsible for Implementation | Responsible for Verification    | Form of Verification                                 | Comments/<br>Special instructions                            | Initials | Date |
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| <b>Prior to Demolition and Construction – continued</b>                                                                                                                                                                                                                                                                                                                                                                                        |                                                        |                                |                                 |                                                      |                                                              |          |      |
| <b>BIO-8:</b> If any Forest Service Sensitive (FSS) or Federal-listed terrestrial wildlife species are discovered within the BTC project site area prior to or during ground disturbance and construction activities, such activities shall cease and not restart until USFS biologist is consulted, recommended measures are implemented and USFS biologist certifies that continued construction would not cause any harm to listed species. | On-going through completion of construction activities | Qualified Biologist            | Forest Service Biologist        | Forest Service Biologist recommendations             |                                                              |          |      |
| <b>CUL-3:</b> Buck and pole fencing shall be installed to protect cultural resources. Fencing shall be constructed by hand with no excavation.                                                                                                                                                                                                                                                                                                 | One-time                                               | Fencing Contractor             | Forest Service City of Berkeley | Fence Design Drawings and Specifications             | Repairs to fencing over time shall be completed as necessary |          |      |
| <b>HYDRO-2:</b> Prior to construction, update the floodplain map to reflect updated base mapping, base flood elevations, final structure placement, and finished floor elevations and submit to the Forest Service and FEMA for review and acceptance.                                                                                                                                                                                         | One-time                                               | Architect                      | Forest Service FEMA             | Floodplain Map<br>Site Plan<br>Construction Drawings |                                                              |          |      |
| <b>During Construction</b>                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                        |                                |                                 |                                                      |                                                              |          |      |
| <b>BIO-3:</b> Major site grading and underground utility construction activities shall be completed during the dry season to minimize risk of harming or displacing overwintering turtles.                                                                                                                                                                                                                                                     | On-going through completion of construction activities | General Contractor             | Forest Service Tuolumne County  | Construction Schedule                                |                                                              |          |      |
| <b>BIO-4:</b> If western pond turtles are discovered in the immediate vicinity of construction activity, construction activity shall cease and a qualified biologist will relocate the turtle to suitable habitat outside of the BTC Project area.                                                                                                                                                                                             | On-going through completion of construction activities | Qualified Biologist            | Forest Service Biologist        | Relocation Report prepared by Qualified Biologist    |                                                              |          |      |

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| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | One-time or On-going                                   | Responsible for Implementation | Responsible for Verification       | Form of Verification                                                       | Comments/<br>Special instructions                                                                       | Initials | Date |
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| <b>During Construction – continued</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                        |                                |                                    |                                                                            |                                                                                                         |          |      |
| <p><b>BIO-9:</b> Follow applicable Forest Service Manual (FSM) 2080 Noxious Weed Management related to construction activities to include, but not be limited to:</p> <ul style="list-style-type: none"> <li>• All vehicles and equipment that go off road must be free of non-native soil, mud (wet or dried), seeds, vegetative matter or other debris that could contain seeds in order to prevent new infestations of noxious weeds in the project area. Dust or very light dirt, which would not contain weed seed, is not a concern.</li> <li>• Flag and avoid noxious weed populations if present. In places where noxious weeds cover large areas, mechanical treatments can be done within sites, but equipment must be cleaned before leaving the area.</li> <li>• Do not stage equipment, material or personnel in areas with noxious weed infestations.</li> <li>• After using equipment in infested areas, clean equipment so that it is free of soil, seeds, vegetative matter or other debris prior to being moved off site.</li> <li>• Use certified weed-free mulches where available, mulches with low risk of weed introduction where certified weed-free is not available, and certified weed-free seed mixes. Seed mixes must conform to the Region 5 Policy on the Use of Native Plant Material in Restoration or Revegetation Projects.</li> <li>• Where soil stabilization is needed, use crushed rock, drain rock, riprap and soil fill obtained from weed-free sources.</li> <li>• Treat invasive plants and other weeds using manual (hand or mechanical) methods only.</li> </ul> | On-going through completion of construction activities | General Contractor             | Forest Service<br>City of Berkeley | List of applicable Noxious Weed Management measures identified in FSM 2080 | Construction specifications shall incorporate applicable Noxious Weed Management measures from FSM 2080 |          |      |

**CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT  
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| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | One-time or On-going                                   | Responsible for Implementation | Responsible for Verification | Form of Verification                                                                                                         | Comments/<br>Special instructions                                 | Initials | Date |
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| <b>During Construction – continued</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                        |                                |                              |                                                                                                                              |                                                                   |          |      |
| <b>CUL-1:</b> Remove specific existing structures to protect sensitive resources.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | On-going throughout removal of designated structures   | City of Berkeley               | Forest Service               | Construction plans and specifications that incorporate measures to protect cultural resources during removal of structures   |                                                                   |          |      |
| <p><b>CUL-2:</b> Cultural resources shall be protected through application of Standard Protection Measures as determined by Programmatic Agreement Among the USDA, Forest Service, Pacific Southwest Region (Region 5), California State Historic Preservation Officer, Nevada State Historic Preservation Officer and the Advisor Council on Historic Preservation Regarding the Process for Compliance with Section 106 of the National Historic Preservation Act for Management of Historic Properties by the National Forests of the Pacific Southwest Region (Regional PA), signed February 2013. In addition:</p> <ul style="list-style-type: none"> <li>• Natural plant succession will be allowed to occur within cultural resource site boundaries.</li> <li>• Notify the Forest Service cultural resource specialist if a new cultural resource site is discovered during project implementation and cease all activities within 150 feet of the resource until consultations are completed.</li> </ul> | On-going throughout construction activities            | City of Berkeley               | Forest Service               | Construction plans and specifications that incorporate measures to protect cultural resources during construction activities |                                                                   |          |      |
| <b>GEO-2:</b> To minimize soil erosion during construction activities, follow FSM 2550 Soil Management R5 Supplement (USDA 2012) and Soil Management Direction identified in the Forest Plan Direction (USDA 2017, p. 57-58).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | On-going through completion of construction activities | General Contractor             | Forest Service               | Compliance with applicable FSM 2550 Soil Management and Forest Plan Direction Soil Management Practices                      | Construction specifications shall incorporate applicable measures |          |      |

**CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT  
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| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | One-time or On-going                        | Responsible for Implementation | Responsible for Verification      | Form of Verification                                                                                                                                                           | Comments/<br>Special instructions                                                                                          | Initials | Date |
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| <b>During Construction – continued</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                             |                                |                                   |                                                                                                                                                                                |                                                                                                                            |          |      |
| <p><b>HYDRO-8:</b> Follow Forest Plan Direction (USDA, 2017, pp. 187-191) for protection of Riparian Conservation Areas (RCAs) through compliance with the Riparian Conservation Objectives (RCOs). The project shall:</p> <p>a. Prepare an Erosion Control Plan / Stormwater Pollution Prevention Control Plan and BMP checklist as part of the construction documentation for Forest Supervisor approval prior to ground-disturbing activities. Reference Appendix A actions.</p> <p>b. Prior to construction activities, delineate riparian zones around all streams and special aquatic features within the permit area to be retained. Exclude ground-disturbing mechanized equipment from operating within riparian zones to be retained.</p> <p>c. Clean equipment used for instream work prior to entering the water body. Remove external oil, grease, dirt and mud from the equipment and repair leaks prior to arriving at the project site. Inspect all equipment before unloading at site. Inspect equipment daily for leaks or accumulations of grease, and correct identified problems before entering streams or areas that drain directly to water bodies. Remove all dirt and plant parts to ensure that noxious weeds and aquatic invasive species are not brought to the site.</p> <p>– Locate construction access perpendicular to the channel and minimize the number of channel crossings and channel damage. Upon completion of use, repair damage to the stream course, including banks and</p> | On-going throughout construction activities | City of Berkeley               | Forest Service<br>Tuolumne County | Erosion Control Plan<br>Stormwater Pollution Prevention Control Plan<br>BMP Checklist<br>Delineation of riparian zones around streams located within permit area.<br>SPCC Plan | Construction specifications shall incorporate Forest Plan Direction measures for protection of Riparian Conservation Areas |          |      |

CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT  
 MITIGATION MONITORING AND REPORTING PROGRAM

| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | One-time or On-going | Responsible for Implementation | Responsible for Verification | Form of Verification | Comments/<br>Special instructions | Initials | Date |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------------|------------------------------|----------------------|-----------------------------------|----------|------|
| <b>During Construction – continued</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                      |                                |                              |                      |                                   |          |      |
| <p><b>HYDRO-8 (cont.)</b></p> <p>channels, to maintain a hydrologic ally stable channel.</p> <ul style="list-style-type: none"> <li>– Remove all project debris from the stream in a manner that will cause the least disturbance.</li> <li>– Minimize streambank and riparian area excavation during construction: stabilize adjacent areas disturbed during construction using surface cover (mulch), retaining structures, and/or mechanical stabilization materials.</li> <li>– Keep excavated materials out of channels, floodplains, and wetlands. Install silt fences or other sediment- and debris-retention barriers between the water body and construction material stockpiles and wastes. Dispose of unsuitable material in approved waste areas outside of the RCA.</li> <li>– Conduct operations during the least critical periods for water and aquatic resources: when streams are dry or during low-water conditions.</li> </ul> <p>d. Locate equipment staging and mitigate by use of erosion prevention measures to avoid sedimentation effects and delivery to a watercourse.</p> <p>e. Implement erosion control measures as needed on all lands disturbed by construction following completion of construction. Reference Appendix A actions.</p> |                      |                                |                              |                      |                                   |          |      |

**CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | One-time or On-going | Responsible for Implementation | Responsible for Verification | Form of Verification | Comments/<br>Special instructions | Initials | Date |
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| <b>During Construction – continued</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                      |                                |                              |                      |                                   |          |      |
| <p><b>HYDRO-8 (cont.)</b></p> <p>f. Conduct watering during construction for dust abatement using approved existing water source locations. Treat construction approaches and staging areas to prevent sediment production and delivery to a watercourse.</p> <ul style="list-style-type: none"> <li>– Check all water-drafting vehicles daily and repair as necessary to prevent leaks of petroleum products from entering RCAs. Water-drafting vehicles will contain petroleum-absorbent pads, which are placed under vehicles before drafting. Water-drafting vehicles will contain petroleum spill kits. Dispose of absorbent pads according to the Hazardous Response Plan.</li> <li>– Use screening devices for water drafting pumps. Use pumps with low entry velocity to minimize removal of aquatic species, including juvenile fish, amphibian egg masses and tadpoles, from aquatic habitats. Pump intake screening specification will be provided and put in the project file.</li> <li>– Prohibit water drafting by more than one truck at a time.</li> </ul> <p>g. Allow temporary refueling and servicing only at approved construction staging sites. Rehabilitate temporary staging, parking, and refueling/ servicing areas immediately following use.</p> <ul style="list-style-type: none"> <li>– Prepare a Spill Prevention and Containment and Counter Measures (SPCC) plan where total oil products on site in above-ground storage tanks exceed 1320 gallons. Review spill plans to ensure they are up-to-date.</li> </ul> |                      |                                |                              |                      |                                   |          |      |



**CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | One-time or On-going | Responsible for Implementation | Responsible for Verification | Form of Verification | Comments/<br>Special instructions | Initials | Date |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------------|------------------------------|----------------------|-----------------------------------|----------|------|
| <b>During Construction – continued</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                      |                                |                              |                      |                                   |          |      |
| <p><b>HYDRO-8 (cont.)</b></p> <ul style="list-style-type: none"> <li>– Install contour berms and trenches around vehicle service and refueling areas, chemical storage and use areas, and waste dumps to fully contain spills. Use liners as needed to prevent seepage to groundwater.</li> <li>– Report spills and initiate appropriate clean-up action in accordance with applicable state and Federal laws, rules and regulations. The hazardous materials coordinator's name and phone number will be available to Forest Service personnel who administer or manage activities utilizing petroleum-powered equipment.</li> <li>– Remove contaminated soil and other material from Forest Service lands and dispose of this material in a manner according to controlling regulations.</li> </ul> <p>h. Place burn piles a minimum of 50 feet away from the South Fork Tuolumne River, Thimbleberry Creek, or intermittent streams and 25 feet away from ephemeral drainages unless otherwise approved by a hydrologist and/or soil scientist. Locate piles outside of areas that may receive runoff from roads. Burn piles in the fall or winter.</p> <p>i. Conduct implementation and effectiveness monitoring using the Best Management Practices Evaluation Program and the National Core BMP Monitoring Technical Guide (Volume 2, FS-990b, in prep) as a supplement.</p> |                      |                                |                              |                      |                                   |          |      |

**CITY OF BERKELEY TUOLUMNE CAMP PERMIT (46690) PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| MITIGATION MEASURE                                                                                                                                                                                                                                                                                                                                                                                | One-time or On-going | Responsible for Implementation | Responsible for Verification                       | Form of Verification                                                                                | Comments/<br>Special instructions                                                                                         | Initials | Date |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------------|----------------------------------------------------|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|----------|------|
| <b>During Project Operation</b>                                                                                                                                                                                                                                                                                                                                                                   |                      |                                |                                                    |                                                                                                     |                                                                                                                           |          |      |
| <b>AIR-2:</b> Acquire burn permits from the Tuolumne County Air Pollution Control District. The California Air Resources Board provides daily information on "burn" or "no burn" conditions. Design and implement burn plans to minimize particulate emissions. Notify the Groveland District Wildlife Biologist prior to pile burning to minimize disturbance to protected or sensitive species. | On-going             | City of Berkeley               | TCAPCD<br>Groveland District<br>Wildlife Biologist | Annual Burn Permit<br>Burn Plan                                                                     | Burn Plan shall be updated as needed to account for modification to facilities and operations at BTC                      |          |      |
| <b>HYDRO-4:</b> Prior to BTC operations, provide a Camp Evacuation Plan for approval by the Forest Service that incorporates protocols and procedures for evacuation in response to summer season storm and/or winter and spring season rain-on-snow or sudden snowmelt events that may lead to high water flows.                                                                                 | One-time             | City of Berkeley               | Forest Service                                     | Camp Evacuation Plan                                                                                | Camp Evacuation Plan shall be updated as needed to account for modification to facilities and operations at BTC           |          |      |
| <b>HYDRO-6:</b> Prior to the beginning (April) and after each BTC summer operating period (October), test the water quality of the South Fork Tuolumne River both at the Hardin Flat Road bridge and at the downstream boundary of the permit area. File results with the Groveland Ranger District.                                                                                              | On-going             | City of Berkeley               | Groveland Ranger District                          | Annual water quality testing report for the period of April - October                               |                                                                                                                           |          |      |
| <b>HYDRO-7:</b> Protect beneficial uses of water through implementation of Best Management Practices (BMPs) in accordance with Regional Water Quality Management Plan (USDA 2011), the National BMPs for Water Quality Management on National Forest System Lands (USDA 2012), and the Forest Plan Direction (USDA, 2017).                                                                        | On-going             | City of Berkeley               | Forest Service                                     | BMP Guidelines Binder identifying management and monitoring of water quality within the permit area | Update the BMP Binder as needed in response to changing water quality conditions and revisions to Fed and State standards |          |      |
| <b>NOISE-1:</b> The speaker system for the BTC stage shall be designed to ensure it does not exceed noise levels of 50 L <sub>eq</sub> dB.                                                                                                                                                                                                                                                        | On-going             | City of Berkeley               | Forest Service<br>City of Berkeley                 | Annual establishment of maximum speaker setting                                                     | At boundary of the Permit Area via handheld SPL meter                                                                     |          |      |

1065667.1



Office of the City Manager

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Department of Public Works

Subject: Community Conservation Centers, Inc.'s Contractual Relief of its Revenue Share Obligation to the City for the Sale of Recyclable Commodities

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to provide contractual relief to Community Conservation Centers, Inc. Recyclable Processing Services Contract, Exhibit B. Section 3.1 "Contractor shall pay City 7.5 percent of annual gross revenue on a monthly basis." The remaining obligation per this Contract is \$1,123,591.87.

FISCAL IMPACTS OF RECOMMENDATION

The requested amount of contractual relief has required the City's Zero Waste Fund to cover this shortfall of projected funds from June 2014 through November 30, 2018.

CURRENT SITUATION AND ITS EFFECTS

The City and Community Conservation Centers, Inc. (CCC) entered into a sole source negotiated contract for the processing of residential and commercial recyclables, effective August 1, 2011 through June 30, 2015 with two (2) one year extensions. The Contract obliged CCC to manage and operate the City's Materials Recovery Facility (MRF) and Buyback/Drop-off Center.

With the expiration of that existing Contract and in an effort to negotiate a new contract, the City and CCC agreed to extensions of the existing Contract through November 31, 2018. During which time the City Council approved a one-time funding approval of \$699,815 in its June 12, 2018 agenda per CCC emergency funding request to cover its significant operation funding shortfall.

The Contract's Payment and Financial Terms provided the City 7.5% of all gross revenue from sales of recyclable commodities to be remitted by CCC on a monthly basis. The Contract provisions provided CCC 92.5% of the gross revenues of all materials received at both the Material Recovery Facility (MRF) and Buyback Center to cover the facilities' personnel and routine equipment maintenance costs and up to \$100,000 annually of any capital funding needs.

From October 2011 through June 2014, CCC remitted \$726,737.75 or 7.5% of gross revenue share payments to the City per the Contract. After several years of significantly depressed marketplace pricing of all recycled commodities, such as corrugated cardboard pricing plummeting from \$350 per ton in 2013 to \$110 per ton in 2015; decreases in the State's California Redemption Value (CRV) payments; international import restrictions; increased personnel and operational costs; and unanticipated equipment repairs, CCC was unable to continue remitting this 7.5% of gross revenue sales to the City.

Since fall of 2014, with the above noted market pricing downturn and increased personnel and operation expenses, CCC was unable to generate sufficient gross revenues to cover its personnel and operation costs of the MRF and Buyback Center or meet the Contract's 7.5% share to the City. Between 2014 and 2016 the annual shortfall in covering personnel and operating costs exceeded \$200,000. This shortfall significantly increased 2017 and 2018.

Due to these market conditions and decreases in State CRV payments, CCC's negative financial situation has become the norm for Buyback Centers and MRFs throughout California. From 2013 to 2018 more than 1,000 Buyback Centers (39% of all state wide Centers) and 52 Recycling Processors (22%) closed their doors in the State<sup>1</sup>. For many Buyback Centers and MRFs to continue operations, cities and municipal agencies have had to reduce the types of recyclable materials and/or increase payments for these operations.

In 2016, the City hired R3 Consulting Group to conduct an audit of CCC's financial and operational performance and to develop a Strategic Action Plan based upon the results of their evaluation. R3's report (attached) recommended that the City to provide CCC relief of its unfunded liability to remit payment to the City of the revenue share amount, stating that "...the revenue share component of the current agreement between the City and CCC is not consistent with current market conditions and practices for other similar operations."

In its November 27, 2018 agenda, the City Council authorized (Resolution No. 68,681-N.S.) the City Manager to enter into new Contract between the City and CCC effective December 1, 2018 through June 30, 2020. The Contract has been assigned Contract Management System (CMS) No. FGDPW. Given that commodity market pricing is not anticipated to improve in either the near or long term, the revenue share requirement was eliminated from the new contract. CCC's operating budget for FY2019/20 projects expenses to exceed revenues throughout the duration of the contract; the shortfall in personnel and operating costs will be funded by the City to ensure CCC's continued operation through June 30, 2020.

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<sup>1</sup> <https://www2.calrecycle.ca.gov/BevContainer/RecyclingCenters?lang=en-US>

**BACKGROUND**

CCC, a non-profit organization, has operated the City's MRF, Buyback Center and the community members' free material drop-off center since the early 1980's. The MRF processes and markets all recyclables collected by the City's commercial and residential dual-stream (fiber and containers collected separately) curbside collection programs. CCC also manages a Buyback Center which accepts CRV containers and other recyclables dropped off by community members. CCC's operation sorts, bales and markets approximately 16,000 tons of recyclables annually.

On July 12, 2011, the City Council (Resolution No. 65,390-N.S.) authorized CCC's Contract (No. R8781) for Recyclables Processing Services. At the City's request, on January 27, 2015 Council authorized a Contract Amendment to add processing of non-bottle rigid plastics to the Contract's scope of services. In addition, the City provided payments for capital and processing costs incurred in the mixed rigid plastics recycling program in FY 2014, FY 2015, FY 2016, FY 2017, and FY 2018 through Contract Amendments as follows:

| <b>Contract #</b> | <b>Auth. Date</b> | <b>Resolution No.</b> | <b>Amount</b> |
|-------------------|-------------------|-----------------------|---------------|
| R8781A            | January 27, 2015  | No. 66,920 – N.S.     | \$212,380     |
| R8781B            | June 28, 2016     | No. 67,602 – N.S.     | \$181,719     |
| R8781C            | July 29, 2016     | No. 67,500 – N.S.     | \$160,500     |
| R8781D            | May 30, 2017      | No. 67,506 – N.S.     | \$500,000     |

In June 2018, CCC requested the City Council to provide emergency operation funding to cover its negative shortfall experienced between commodity revenues and operating costs due to a sharp downturn in recycling commodity prices and urgent equipment repairs. On its June 12, 2018 agenda, the City Council directed the City Manager<sup>2</sup> to provide this requested emergency term funding \$699,815 to CCC to continue operations until September 30, 2018, while a new contract with the City was negotiated.

On October 2, 2018, the City Council authorized the City Manager<sup>3</sup> to amend the existing Contract (No. R8781D) to extend the existing Contract's term through November 30, 2018 and to increase the Contract the total not to exceed amount by \$466,542. This Contract Amendment allowed CCC to continue the sorting, baling and marketing of all City and contractor curbside collected recyclable materials until a new contract could be authorized by the City Council.

<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/06\\_June/Documents/2018-06-12\\_Item\\_35\\_Short\\_Term\\_Contract\\_Extension.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/06_June/Documents/2018-06-12_Item_35_Short_Term_Contract_Extension.aspx)

<sup>3</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/10\\_Oct/City\\_Council\\_10-02-2018\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/10_Oct/City_Council_10-02-2018_-_Regular_Meeting_Agenda.aspx)

ENVIRONMENTAL SUSTAINABILITY

The recyclable material sorting, processing and marketing services provided by CCC are consistent with the City of Berkeley's 2009 Climate Action Plan, 2005 Zero Waste Goal, and long-standing commitment to protect the environment. The MRF, Buyback Center and free Material Drop-off services provided by CCC support the highest and best use of recyclable material and reduce waste sent to regional landfills.

RATIONALE FOR RECOMMENDATION

CCC operates the only MRF and Buyback Center located within the City that provides material recycling processing and marketing services to Berkeley community members, to surrounding communities, and to the City's commercial and residential curbside collection programs. CCC stated in a letter to the City Manager dated October 30, 2018 (attached), "...the (financial) obligation became commercially impractical during the contract term, and forgiveness of the debt will be a benefit to the City by ensuring that the City and its citizens will have a viable recycling program through the contract extension period to help achieve its Zero Waste Goal." With expenses exceeding revenues, CCC does not have the funds to pay the City the 7.5% revenue share amount obligated by the previous contract, and the market conditions that contributed to this shortfall are expected to continue throughout the term of the contract.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Heidi Obermeit, Recycling Program Manager, Zero Waste Division - Public Works,  
(510) 981-6357

Attachments:

- 1: Resolution
- 2: R3 Consulting Group, Inc. Letter Report of Audit Findings and Strategic Action Plan
- 3: October 30, 2018 Request by Community Conservations Centers, dba Berkeley Recycling, for Forgiveness from Current Financial Obligation to the City of Berkeley

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

COMMUNITY CONSERVATION CENTERS, INC.'s CONTRACTUAL RELIEF OF ITS REVENUE SHARE OBLIGATION TO THE CITY OF BERKELEY FOR THE SALE OF RECYCLABLE COMMODITIES

WHEREAS, Community Conservation Centers, Inc. (CCC), a non-profit organization, has operated the City's Municipal Recycling Facility (MRF), Buyback and Drop-off Center since the early 1980's; and

WHEREAS, CCC operates the only MRF and Buyback Center located within the City that provides material recycling processing and marketing services to Berkeley community members, to surrounding communities, and to the City's commercial and residential curbside collection programs; and

WHEREAS, On July 12, 2011 by Resolution No. 65,390-N.S., City Council authorized Contract No. R8781 with CCC for recyclables processing services from August 11, 2011 to June 30, 2015, and subsequently amended by Council authorization; and

WHEREAS, the Contract's Payment and Financial Terms provided the City 7.5% of all gross revenue from sales of recyclable commodities to be remitted by CCC on a monthly basis; and

WHEREAS, from October 2011 through June 2014, CCC remitted \$726,737.75 or 7.5% of gross revenue share payments to the City per the Contract; and

WHEREAS, since 2014, CCC was unable to generate sufficient gross revenues to cover its personnel and operation costs of the MRF and Buyback Center or meet the Contract's 7.5% share to the City due to a sharp decline in international market prices for recyclable commodities; decreases in the State's California Redemption Value (CRV) payments; international import restrictions; increased personnel and operational costs; and unanticipated equipment repairs, with the market pricing downturn and increased personnel and operation expenses; and

WHEREAS, due to market conditions and decreases in State CRV payments, CCC's financial situation has become the norm for Buyback Centers and MRFs throughout California. From 2013 to 2018 more than 1,000 Buyback Centers (39% of all state wide Centers) and 52 Recycling Processors (22%) closed their doors in the State. For many Buyback Centers and MRFs to continue operations, cities and municipal agencies have had to reduce the types of recyclable materials and/or increase payments for these operations; and

WHEREAS, on November 27, 2018, by Resolution No. 68,681-N.S., the Berkeley City Council authorized the City Manager to execute a new contract with Community Conservation Center, Inc. to provide recyclables processing services including rigid mixed plastics for an amount not to exceed \$4,000,000 from December 1, 2018 to June 30, 2020 without the revenue share requirement.

THEREFORE, with expenses exceeding revenues, CCC does not have the funds to pay the City the 7.5% revenue share amount obligated by the previous contract, and the market conditions that contributed to this shortfall are expected to continue throughout the term of the new contract; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to relieve Community Conservation Centers, Inc. of its unfunded revenue share obligation of 7.5% of gross revenues from recyclable commodity sales. The remaining obligation per this Contract is \$1,123,591.87. A record signature copy of said amendment to be on file in the Office of the City Clerk.



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1512 Eureka Road, Suite 220, Roseville, CA 95661  
Tel: 916-782-7821 | Fax: 916-782-7824

2600 Tenth Street, Suite 411, Berkeley, CA 94710  
Tel: 510-647-9674

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627 S. Highland Avenue, Suite 300, Los Angeles, CA 90036  
Tel: 323-559-7470

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September 30, 2016

Mr. Phillip Harrington  
City of Berkeley Public Works Department  
2180 Milvia Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

**Subject: Letter Report of Audit Findings and Strategic Action Plan**

Dear Mr. Harrington:

R3 Consulting Group, Inc. (R3) is pleased to submit this Letter Report to the City of Berkeley (City) detailing the findings of our audit of Community Conservation Centers (CCC). This Letter Report includes our proposed Strategic Action Plan to guide CCC and the City towards more effective and efficient recyclables processing in Berkeley.

Overall, R3 found CCC's operations to be largely effective and well-managed. CCC processes the City's recyclables efficiently given limitations of available space, aging equipment, and constrained configuration of the materials recovery facility and buyback/drop-off operations. Outside of the potential for the City to collect and deliver new commercial tons to CCC in the future, there are very limited opportunities for CCC to increase the tons it processes and thereby increase economies of scale and efficiency. There are a number of potential areas where CCC could reduce its expenses, which we have discussed and shared with CCC, and have included in the Strategic Action Plan.

The Strategic Action Plan includes a number of recommendations regarding the next iteration of the contractual relationship between the City and CCC for operation of the MRF and Buyback Center. Foremost among these is our recommendation to change the compensation structure such that both the City and CCC share in the risk and reward of changing recyclables markets in the future.

Should you have any questions regarding this Letter Report, or need any additional information, please contact me by phone at (510) 292-0853 or by email at [gschultz@r3cgi.com](mailto:gschultz@r3cgi.com).

Sincerely,

**R3 CONSULTING GROUP**



Garth Schultz | Principal

Attachment: A – CCC Strategic Action Plan Implementation Worksheet

Mr. Phillip Harrington  
Operational Audit and Strategic Action Plan for Community Conservation Centers  
September 30, 2016  
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Mr. Phillip Harrington  
Operational Audit and Strategic Action Plan for Community Conservation Centers  
September 30, 2016  
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## Background

The City engaged R3 to conduct an audit of CCC's financial and operational performance, and to develop a Strategic Action Plan based upon the results of our evaluation.

### CCC's Operations

CCC has operated the City's materials recovery facility (MRF) and recyclables buyback/drop-off operations (Buyback Center) since the 1980's. CCC is currently operating the MRF and Buyback Center under a contract that is due to expire on June 30, 2017. Per the terms of the contract, CCC is to cover its expenses – and annual revenue sharing payments to the City – using only the revenues from the sale of recyclable materials received at the MRF and Buyback Center.

The MRF accepts, processes and markets dual-stream recyclables (containers and fiber) delivered by the City of Berkeley and the Ecology Center, totaling approximately 11,500 tons of recyclables per year. CCC operates two MRF sorting lines (one for containers and one for fiber) which are housed in separate buildings. Recyclable materials collected from residents and businesses are separated via largely manual means into fibers – including mixed paper and old corrugated cardboard (OCC) – and containers – including glass, plastic, and cans. Several employees and pieces of equipment are shared between the two sorting lines. Employees that are utilized between both sorting lines include loader and forklift operators, sorters, and supervisors; shared equipment includes loaders, forklifts, and, most notably, the facility's sole baler, which bales materials from both sorting lines.

The Buyback Center accepts source separated materials delivered by members of the public and small businesses. Materials are either donated to CCC (via the "drop-off" portion of the operation) or bought by CCC. Overall, the Buyback Center accepts approximately 3,500 tons of recyclables per year. CCC issues approximate \$1,000,000 in payments to the public in approximately 30,000 transactions annually; most of these payments are for California Redemption Value (CRV) materials, the payments and operations of which are regulated by California State Law.<sup>1</sup>

The MRF and Buyback Center receive CRV revenue from the State for qualifying beverage containers, including administrative revenue associated with the CRV program. CCC also receives a quality incentive payment from the State associated with the quality of the glass processed by CCC.

In recent years, CCC has not been able to meet its expenses – or make required payments to the City – due to significant downturns in markets for recyclable materials. As discussed in the Operations Audit section of this Letter Report, both CCC's Buyback Center and MRF operations do not generate revenues sufficient to meet expenses, resulting in an annual shortfall of approximately \$200,000 on average between 2014 and 2016. Shortfalls in 2015 and 2016 average over \$310,000 per year.

### Buyback Centers Closing in Large Numbers Statewide

CCC's shortfall situation is commonplace for buyback centers in California; it is now the standard for similar buyback operations to have expenses that exceed revenues for materials sold. This situation is due to an overall decline in recyclable materials values and decreases in CRV payments over the course of the

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<sup>1</sup> <http://www.calrecycle.ca.gov/BevContainer/>

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Operational Audit and Strategic Action Plan for Community Conservation Centers  
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past several years. In the past year alone, one-fifth of all buyback centers (about 450) have closed in California<sup>2</sup> and 800 buyback centers have closed State-wide over the course of the last three years.

### CCC Similar to Other MRF's

Given current market conditions, MRFs are similarly unable to cover expenses with the revenue from material sales alone. R3 conducted interview surveys of several Bay Area MRF's (including both publicly and privately owned facilities) and found that revenues from recyclable materials cover anywhere between 20% and 90% of operational expenses.<sup>3</sup> MRFs that continue to operate under these conditions generally stay afloat by using profits from other associated operational units (collection operations, transfer stations, landfill operations, etc.) to cover shortfalls in their MRF operations.

With declining materials sales, it is becoming common for MRF operators to charge customers on a "per-ton" basis to cover the costs of processing recyclable materials. Several MRFs charge an up-front per ton cost and then remit some of the revenues from the sales of the recyclable materials back to the customer. This insulates MRF operators from fluctuations in market prices, while ensuring that customers also benefit from increases in recyclable materials values.

## Financial Audit

R3's subconsultant, Armanino, is preparing a financial statement for CCC for the period ending August 31, 2016. This financial statement is being prepared under GAAP accounting for non-profit companies. The financial statement, associated report and management letter will be finalized after completion of Armanino's separate process that will include review of the above with CCC and the City.

The Financial Audit was designed to determine whether, in Armanino's professional opinion, CCC management has prepared and fairly presented financial statements, in accordance with accounting principles generally accepted in the United States, that are free from material misstatement whether due to fraud or error. Findings and recommendations relating to the Financial Audit will be communicated by Armanino via a separate report. This Letter Report does, however, include Strategic Action Plan elements identified by Armanino during the course of the Financial Audit.

## Operational Audit

### Overview

In conducting the Operations Audit, R3 focused on answering the following questions:

- What key metrics does management use to determine efficiency, cost effectiveness and responsiveness of operations to the fluctuating materials recovery markets?
- How does CCC evaluate and fill resource and equipment needs?

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<sup>2</sup> Costello, Darcy. "Hundreds of California recycling centers shut down."  
<http://www.scpr.org/news/2016/07/20/62796/hundreds-of-california-recycling-centers-shut-down/>

<sup>3</sup> For CCC in 2015 and 2016 (projected), sale of materials from the MRF covered about 86% of MRF operational costs.

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In answering these questions, R3 evaluated CCC's performance in four best management practice areas, including:

- Having systems and procedures in place to identify and minimize contaminants in the source separated materials that are delivered to the MRF for processing;
- Incorporating operational efficiencies to achieve processing of commodities in the most economical manner;
- Maintaining operational effectiveness to ensure that commodities are recovered to meet market specifications; and
- Having operational adaptability to adjust processing systems and procedures to process and market commodities to sustain operational efficiencies and effectiveness.

## Findings

### Overall

1. CCC has effective systems and procedures in place to identify and minimize contaminants in the recyclable materials that are delivered to the MRF for processing. Recyclable commodities resulting from CCC's sorting processes are high quality and meet or possibly exceed specifications for marketing and recovery.
2. CCC strives to minimize contamination and residual materials in its recycling streams, and works with the City and Ecology Center to do so. Given the low residual rate<sup>4</sup> reported by CCC (less than 5%) these processes appear to be highly effective.
3. CCC appears to be incorporating operational efficiencies to achieve processing of commodities in an economical manner. A number of alternatives considered and evaluated by R3 during this Audit had already been evaluated by CCC in the past, with largely similar conclusions.
4. CCC actively evaluates and adjusts operations to account for operational efficiencies and effective processing of materials. However, current site conditions (facility layout, structures and equipment) are barriers to more efficient processing, especially for the container stream. The container sorting line is small and largely manual, with some materials (PET, HDPE, and cans) requiring double or triple handling prior to baling of materials. Baling of those materials also requires manual labor inputs at the baler, which is not required for the more efficient and single-handled fiber material stream.
5. There are limited opportunities to increase CCC's revenues. This is because CCC is currently sorting a full range of recyclable materials, including some materials such as colored glass that are not commonly sorted. There are virtually no opportunities to increase revenue by processing additional materials from other jurisdictions or clients; most, if not all, of the "flexible" recycling streams that could potentially be directed to CCC are collected as "single-stream" recycling, which cannot currently be processed at the MRF.

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<sup>4</sup> "Residuals" are the materials that are not captured via the sorting process, and include contaminants such as garbage and other non-recyclable materials as well as materials that are recyclable but were not sorted appropriately. The "residual rate" is the percentage of such materials compared to the total amount of materials that were sorted; most MRF's typically operate with a residual rate between 5% and 15%.

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6. CCC's site configuration, structure, equipment, and dual-stream recyclables processing systems make it challenging for CCC to adapt to changing market conditions. There appears to be no incoming recyclable materials that CCC is failing to capture, and (as is further discussed below) opportunities to increase operational cost-effectiveness – which are essentially limited to reducing labor – would limit CCC's ability to produce high quality marketable commodities with a low overall residual rate.
7. The City's plans to transition away from its non-exclusive commercial franchise system and take over collection of commercial recyclables will result in additional recyclables tonnages delivered to CCC. R3 estimates that 2,500 to 4,000 tons of recyclables per year could be directed to CCC following this change, resulting both in increased revenues and expenses. Based on R3's initial assessment of the material types that could be directed to CCC, it appears that the addition of these tonnages could result in an overall annual net increase in revenue over expenses of approximately \$115,000 to \$180,000.<sup>5</sup>

### MRF Operations

There are three primary phases to the flow of materials through a MRF, including those through CCC's facility, with best practices associated with each phase:

- Receiving and preparing materials for the sorting process;
- Sorting the materials into their individual material streams; and
- Inspecting, baling, storing and shipping sorted materials.

R3 has reviewed each of these phases of CCC's operations, and has found them to be adequate, with the caveat that the MRF site has constraints in terms of space and equipment. These result in some operational inefficiencies such as double handling of materials from the container sorting line, which could be addressed via a reconfiguration of the site and equipment (which is proposed in the Strategic Action Plan).

Table 1, on the following pages, provides an overview of our assessment of CCC's sorting processes.

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<sup>5</sup> Based on R3's field observations of Berkeley commercial recycling tons that are currently not collected by the City, we believe that the most of the new tonnage that would be processed by CCC would be mixed paper and OCC. Both of these material types are cheap to process and yield high prices on the recyclables market.

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| <b>TABLE 1: Assessment of CCC's Sorting Processes</b>                                    |                                                                                                               |
|------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| <b>Process</b>                                                                           | <b>Assessment</b>                                                                                             |
| <i>Receiving and preparing materials for the sorting process.</i>                        | Adequate; covered drop-off area needed for containers.                                                        |
| <i>Sorting the materials into their individual material streams.</i>                     | Effective; high quality, low residual.                                                                        |
| <i>Inspecting, baling, storing and shipping sorted materials.</i>                        | Adequate; more storage space for bales would be beneficial.                                                   |
| <i>Traffic control.</i>                                                                  | Effective.                                                                                                    |
| <i>Vehicle unloading.</i>                                                                | Effective.                                                                                                    |
| <i>Load checking policy and procedures for identifying contaminated loads.</i>           | Effective; low contamination observed in delivered recyclables.                                               |
| <i>Storage capacity (number of days of incoming material storage capacity).</i>          | Adequate; limited overall by facility footprint and layout.                                                   |
| <i>Effectiveness of segregation of incoming materials.</i>                               | Effective; simple systems in place to maintain segregation.                                                   |
| <i>Movement of containers from tip floor to processing line.</i>                         | Adequate; faster container line would reduce/eliminate periodic backlog.                                      |
| <i>Processing system design.</i>                                                         | Minimally adequate; better design would eliminate double handling and yield marginal increases in efficiency. |
| <i>Conveyor widths, configurations and belt speeds.</i>                                  | Adequate; improvements to both sorting lines could increase speed and thus efficiency.                        |
| <i>Material metering systems and burden depth of materials.</i>                          | Adequate.                                                                                                     |
| <i>Sorting approach (which materials are sorted when and how).</i>                       | Effective; contaminants are positively sorted from both streams yielding low residual.                        |
| <i>Sorter ergonomics (e.g., forward throw vs. backward pull, belt height and width).</i> | Adequate; upgraded lines could provide more room for sorter operations, and better ergonomics.                |
| <i>Current and historical recovery rates.</i>                                            | Excellent; high quality, low residual.                                                                        |

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| <b>TABLE 1: Assessment of CCC's Sorting Processes</b> |                                                                                                                                   |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <b>Process</b>                                        | <b>Assessment</b>                                                                                                                 |
| <i>Mechanical sorting systems.</i>                    | Limited; sorting line configuration and throughputs limit cost-effectiveness of mechanical sorting systems.                       |
| <i>Housekeeping.</i>                                  | Adequate; more housekeeping at shipping container loading area needed.                                                            |
| <i>Maintenance.</i>                                   | Limited; basic preventative maintenance is addressed, but not long-term capital needs. Some maintenance has been deferred.        |
| <i>Pre-baling storage.</i>                            | Adequate.                                                                                                                         |
| <i>Baler operation.</i>                               | Limited; baler is not ideal for containers, yielding additional handling inputs. Baler is old and in need of replacement.         |
| <i>Bale density, bale wire usage.</i>                 | Adequate.                                                                                                                         |
| <i>Bale handling and storage.</i>                     | Adequate.                                                                                                                         |
| <i>Residuals management.</i>                          | Excellent; low residual compared to industry.                                                                                     |
| <i>Loading and transport of recovered materials.</i>  | Adequate; loading area is adjacent to processing operations. Some materials are not able to meet weights for shipping containers. |

#### Revenue Shortfalls: MRF and Buyback Center

Evaluating how expenses and revenues compare for CCC's operations requires allocation of expenses and revenues between CCC's two main operational functions (MRF and Buyback Center).

CCC allocates labor expenses associated with each operational unit based on the amount of overall staff time utilized via each operations. Using CCC's staffing allocations as well as CCC's budgeted line-item expenses for the last three years, R3 estimated the expenses (including labor, supplies, overhead and other expenses) associated with the MRF and Buyback Center.<sup>6</sup> Based on our analysis, approximately \$1.38 million in annual expenses are attributable to the Buyback Center – including \$1 million in payments to buyback patrons – accounting for approximately 44% of CCC's overall operational expenses. Allocated expenses for MRF operations are approximately \$1.79 million per year, and 56% of overall operational expenses.

<sup>6</sup> Note that this analysis only includes operational expenses, and as such it does not include expenses such as amortization of capital expenditures or deferred maintenance.

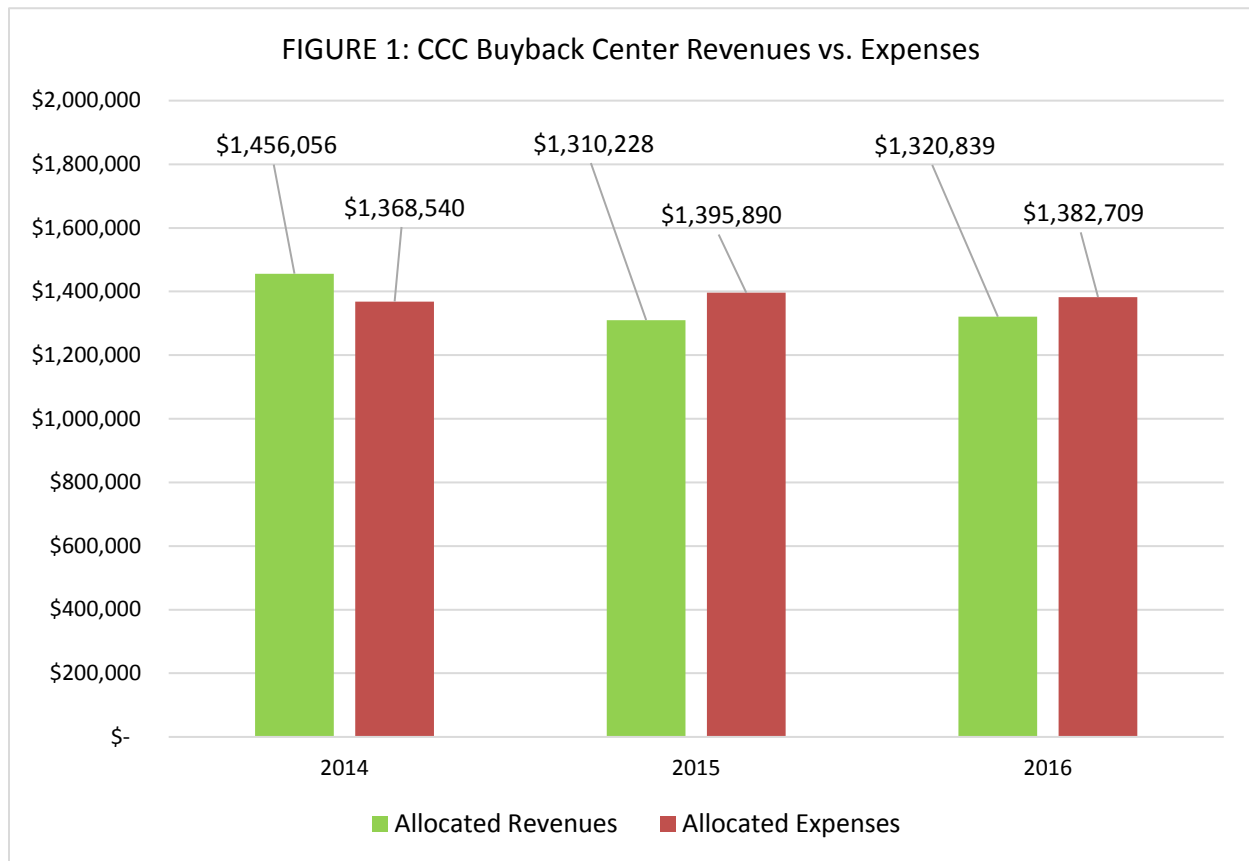


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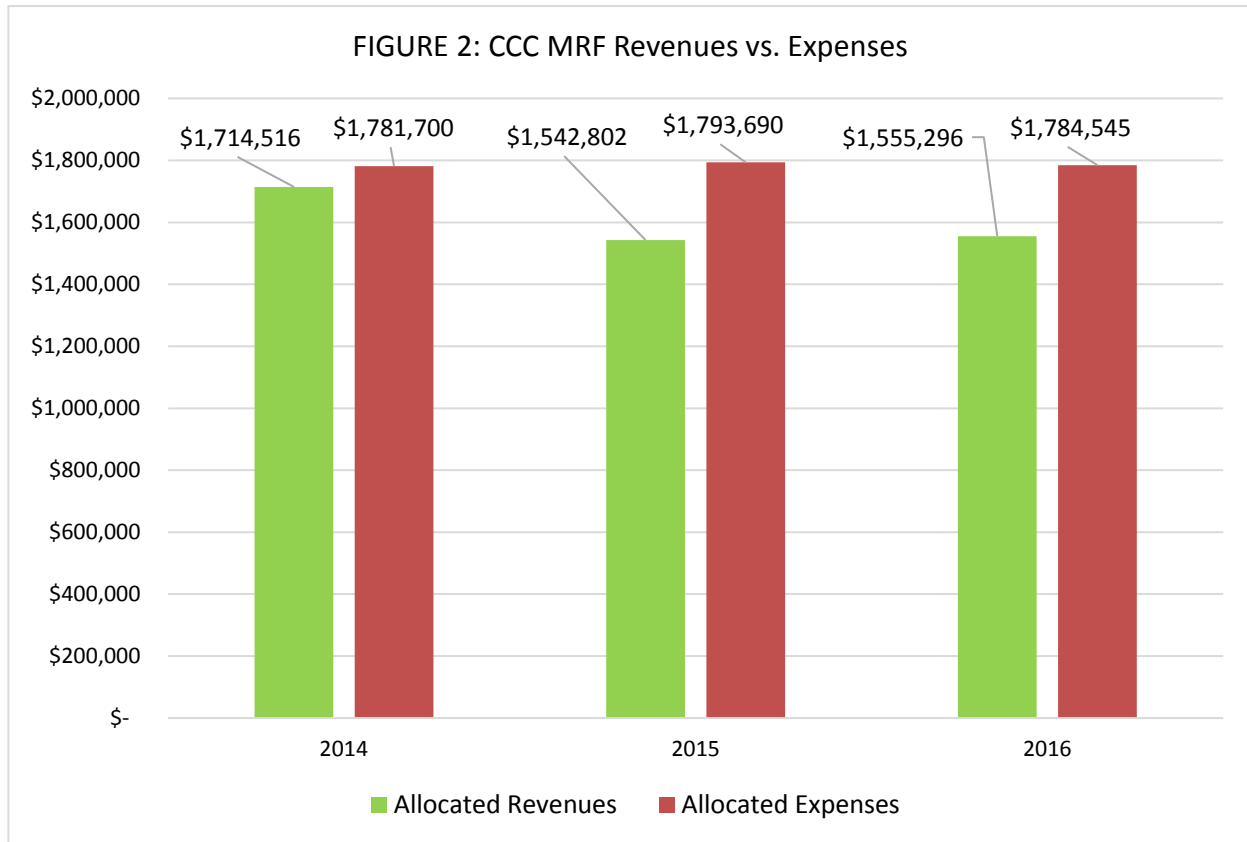
Similarly, allocated revenues for the Buyback Center operations total to approximately \$1.36 million annually (46% of overall revenues) and allocated revenues for the MRF total to approximately \$1.60 million annually (54% of overall revenues). Buyback Center tonnage is only 23% of the total tonnage, but revenues associated with the Buyback Center are disproportionately higher than material processed by the MRF because the value of the materials received via that operation is significantly greater than the materials processed by the MRF.

Overall, from 2014 through 2016 (projected), CCC has annual revenues of approximately \$2.96 million, annual expenses (including payments to public patrons) of \$3.16 million, and an average annual shortfall of \$200,000. The annual average shortfall attributed to the Buyback Center is approximately \$20,000 year, or approximately \$18 per ton. The annual average shortfall attributed to the MRF is approximately \$182,000 year, approximately \$15 per ton on average. In 2016 these amounts will be approximately \$18 per ton for the Buyback Center (a \$62,000 shortfall) and \$19 per ton for the MRF (a \$230,000 shortfall).

Figures 1 and 2, below and on the following page, demonstrate the results of this analysis.



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### Deferred Maintenance

CCC has been running a “lean” operation at a net shortfall for the past two years, and as such preventative of equipment has been deferred. The following is a brief list of deferred maintenance items that have been identified by CCC:

- Containment barriers for commingled paper and container storage piles;
- Pot hole repair;
- Asphalt replacement;
- Vehicle replacement;
- Office equipment replacement and upgrades; and
- Baler repair.

The costs associated with these deferred maintenance items are estimated by CCC at one-time costs of about \$80,000. These and other deferred maintenance costs (still to be identified and evaluated) should be considered when entering into new contractual relationship and forming a financial plan for the MRF and Buyback Center moving forward.

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## Management & Administration Review

### Overview

Our review of CCC's management and administration was designed to answer the following questions:

- What are the major factors driving CCC's costs and what opportunities are there to reduce those costs?
- Does CCC use performance metrics that measure the efficiency and effectiveness of its operations?
- Are there clear and established performance standards (benchmarks)?
- Is performance tracked against those benchmarks?
- Is performance regularly communicated to staff (does staff know how they are performing related to established standards)?
- Is staff held accountable for performance (both good and bad)?

In answering these questions, R3 assessed the extent to which CCC has in place effective management structure and management systems necessary to support effective operations, track and evaluate performance, and identify, realize and sustain available opportunities for improvement.

### Findings

#### Overall

8. The major factors driving CCC's costs are labor inputs in the MRF container sorting line, followed by the MRF fiber sorting line and the Buyback Center. Opportunities to reduce those costs would largely involve reduction in labor, facilitated by increases in efficiency and/or reduction in service (e.g. limited days of operation for the Buyback Center). As discussed on the following page, these types of opportunities are in conflict with CCC's main operational goals.
9. CCC management measures performance in terms of how quickly and effectively materials are processed after they are delivered by the City, Ecology Center, and the public. This is largely done via visual observation of material stockpiles, and assessment of production reports from the container sorting line.<sup>7</sup> The container sorting line is frequently operating at maximum capacity, sometimes requiring overtime shifts to process enough material that accumulation does not limit operation effectiveness.
10. CCC management tracks and monitors performance related to the visual observations of material stockpiles and the production reports in order to make necessary operational changes to keep material stockpiles at a minimum. Overall performance is communicated to staff, and management makes staffing changes (e.g., hiring, firing, re-assignment) as needed to increase productivity. CCC management tracks the daily output of the container line by recyclable material type, including sorting staff assignments. Management reviews these logs when material

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<sup>7</sup> The fiber sorting line and Buyback Center do not generate similar reports, as these portions of the operation are more leanly staffed and also not subject to the same backlog of materials that is often present for the container sorting line.

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processing appears to be lagging behind, and has indicated that staff performance is assessed based on these logs and other observations. Poor performance has resulted in termination of non-productive employees in the past.

### CCC Operational Goals

Our on-site interviews and observations indicate that CCC operations are structured to meet three primary goals:

- Produce high-quality recyclable commodities for sale on the recyclables market;
- Keep a very low residual rate by capturing as much of the incoming recyclables materials streams as possible; and
- Employ people to achieve the above goals.

These goals are not entirely compatible with achieving maximum operational efficiency or adaptability in a changing market place. MRF operators that strive to maximize efficiency and cost-effectiveness generally make strategic decisions to reduce costs by reducing labor, which for CCC would likely also result in declining material quality and increased residual rates.

## Strategic Action Plan

### Overview

Development of the Strategic Action Plan (Plan) was a collaborative effort between R3 and CCC management staff. Draft Plan elements were shared and discussed with CCC management prior to finalization in this Letter Report. CCC management has been open to considering options to improve operations, and management worked hand-in-hand with R3 to identify recommendations for improvement.

The following Strategic Action Plan elements focus on opportunities to:<sup>8</sup>

- Increase revenues;
- Decrease expenses;
- Better position CCC for changes in recycling markets; and
- Facilitate a new contract between the CCC and the City that more appropriately addresses the risk inherent in recyclables processing operations.

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<sup>8</sup> R3 had previously suggested evaluating Strategic Action Plan “alternatives” with respect to the cost per ton of materials, changes in the capture and diversion of recoverable materials, and changes in greenhouse gas (GHG) emissions. The proposed Strategic Action Plan elements described in this Letter Report do not evaluate these factors because the Plan itself is not discussing alternatives, but rather a set of recommended steps that will reduce the per ton cost of CCC’s processing of materials without material impacts to diversion levels and GHG emissions. These latter two factors would be important in terms evaluating alternatives to a new contract with CCC, which is not the subject or intent of this Letter Report.

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Each Plan element is discussed below. Plan elements are organized via three main categories: contractual relationship between the City and CCC; changes to MRF and Buyback Center operations, and; accounting changes.

Attachment A (CCC Strategic Action Plan Implementation Worksheet) provides additional detail for each Plan element, including: required resources, responsible parties, implementation schedule and cost estimates.

## Contractual Relationship between the City and CCC

The following Strategic Action Plan elements should be addressed in the next iteration of the contractual relationship between the City and CCC.

### **1 New Compensation Arrangement for Materials Delivered to the MRF**

The current contractual relationship between the City and CCC places all of the risk (and reward) of changes in the recyclables markets on CCC. As stated earlier in this Letter Report, CCC is required to meet its operational expenses (and annual payments to the City) through the revenues received from the sale of recyclables materials. This is generally not possible for MRFs given the current state of recyclables markets. As a result, CCC has experienced annual shortfalls and has been unable to make payments to the City.

Going forward, the compensation arrangement between the City and CCC should mirror the arrangements offered by other MRFs; that is, the cost of operations should be decoupled from the revenue from material sales. This could be achieved through a variety of means, though R3 recommends that the arrangement be based on:

- A negotiated per ton cost of processing recyclables through the MRF, based on actual MRF operational expenses per ton, less adjustments for cost savings such as those suggested in this Strategic Action Plan; and
- A rebate on the per ton cost proportional to the amounts of revenue actually recovered from the sale of recyclable materials.

Such an arrangement would ensure sustainable funding that meets the operating expenses of the MRF, while also providing for a mechanism for the City and its rate-payers to share in the risks and rewards related to changes in the recyclables marketplace. The compensation arrangement should also have mechanisms to incentivize greater cost-effectiveness for CCC, in terms of reduced costs and/or increased revenues, which are elements of the current contractual relationship that have provided benefit to the City and its rate-payers. One such mechanism would be for CCC to keep a share of the materials sales above a certain annual threshold, though there are other mechanisms that could be considered. A number of example arrangements are available to use as a basis for a new contractual arrangement moving forward.

### **2 Separately Fund Buyback Center Operations**

The current contractual relationship between the City and CCC does not distinguish between MRF and Buyback Center operations. However, as discussed in this Letter Report, there are distinct (yet related) factors contributing the operational effectiveness of each operational unit. The City's prime concern should be establishing contract terms for MRF processing and marketing of the recyclable materials

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collected by the Ecology Center and the City from Berkeley residents and businesses, in the same way that the City does for organics and garbage collected within the City. The Buyback Center, though a valued and well-used community resource, does not provide a core service for City residents and businesses in the same way that the MRF does. Rather, the Buyback Center provides a convenient place for Berkeley and non-Berkeley residents and businesses alike to drop off (and be paid for) recyclable materials. Given this distinction – and the fact that the Buyback Center operations contribute to CCC’s overall shortfall – future contractual terms should distinguish the MRF and Buyback operations from one another. Revenues and expenses related to each operation should be tracked and reported separately by CCC, and funding of future Buyback Center shortfalls (if any) should be treated separately from the MRF operation, and at the City’s discretion.

To achieve this, CCC should provide a detailed report of the specific revenues and expenses for both operations to the City on a regular basis (i.e. quarterly). If CCC continues to experience a shortfall in Buyback Center revenues vs. expenses, then CCC could request funding of the shortfall amount in order to continue Buyback Center operations. Likewise, surplus revenue generated from the Buyback Center could be used to offset shortfalls in the MRF operations.

If materials revenues and/or CRV revenues increase (and other proposed elements of this Strategic Action Plan relating to Buyback Center operations are implemented and successful), the shortfall could likely be less than the projected shortfall of \$62,000 in 2016. Given the rate of buyback centers closing in the State, the City may wish to continue to fund the Buyback Center shortfall in the future (which it could likely do with Measure D funds from StopWaste or other sources), but should have the discretionary ability to do so, separate from the MRF operations.

### **3 Clarify Roles and Responsibilities between the City and CCC**

There is currently a lack of clarity between the City and CCC regarding the roles and responsibilities of each party as they relate to the ownership and operation of the MRF and Buyback Center. For example, the City has historically funded the purchase of equipment that, from an accounting standpoint, now appear to be owned by CCC. Likewise, over time the City has viewed the MRF and Buyback Center as “CCC’s program”, while CCC reportedly sees itself as the operator of the “City’s program”.

In R3’s opinion, and based on our understanding of other similar and successful relationships, the City should be fully responsible for ownership of the site, structures, equipment, and capital investment plan. CCC, on the other hand, should be responsible for the operation of, and preventative maintenance for, the site, structures and equipment.

As the municipal owner with a private (non-profit) operator, the City should set the programmatic requirements, and CCC should be responsible for implementing and meeting them. In part due to changes over time and the current contractual relationship, these distinctions have not been made fully clear; going forward, both the City and CCC would benefit from greater clarity and a mutual understanding of each party’s role in providing for recycling processing services for the City’s rate-payers.

Of particular importance in clarifying these roles and responsibilities going forward include, but are not limited to:

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For the City:

- A capital investment plan and overall financial plan for MRF and Buyback Center operations, showing capital investments and deferred maintenance expenses and financing as well as the cost of operations (e.g. payments to CCC);<sup>9</sup>
- Engagement of CCC as the operator in gathering feedback on the capital investment and deferred maintenance plan;
- A commitment to provide funding, design and construction services for deferred maintenance and capital investment elements that are identified in the capital investment plan; and
- A clear description of programmatic and performance requirements for CCC as the operator, and a mechanism for addressing failure to meet those requirements.

For CCC:

- A commitment to operate the MRF at agreed upon compensation rates;
- A preventative maintenance plan for all facilities and equipment; and
- A commitment to meet programmatic and performance requirements, and acceptance of administrative charges or other agreed-upon penalties for not meeting those requirements.

## Changes to MRF and Buyback Operations

The following Strategic Action Plan elements involve operational and capital changes for the MRF and Buyback Center.

### **4 Install OCC Screen on Fiber Line**

An OCC screen should be added to the fiber line to reduce manual labor needs on that sorting line. Rather than the OCC being sorted manually, as is done now, the OCC screen would mechanically sort the OCC from the mixed paper. This would also potentially increase the amount of material the fiber line could process in a given shift. This screen and associated equipment installation expenses would cost approximately \$350,000, and will likely require some reconfiguration of the fiber sorting line.

Labor expense savings associated with this option are estimated at \$92,000 per year for two sorting laborers. Including amortization of the equipment over 10 years, installing the OCC screen would result in a net decrease in expenses of approximately \$55,000 per year, assuming that only one sorter remains on the fiber sorting line to remove contaminants.

### **5 Install New Baler for Fiber Line**

The baler used for both the MRF fiber and container sorting operations is in need of replacement. The current baler was purchased used, is approximately 15 to 20 years old, and is nearing the end of its useful lifetime. The baler is designed to process fiber materials, but CCC also uses it to bale containers. Going forward, the each line should have its own baler, which will reduce double handling of containers and also maximize opportunities for meeting shipping container weights for containers.

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<sup>9</sup> Table 3 in this Letter Report serves as example of such a financial plan for the MRF and Buyback operations.

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A new (or potentially used) baler for the fiber line is estimated to cost \$250,000. At a minimum 10-year depreciation, this would add \$25,000 per year to the cost of MRF operations. There may be short term efficiencies gained from a new baler; however, for the purposes of providing conservative estimates, these efficiencies are not included in our analysis. A separate baler for the container line is addressed in Plan element #10, on the following page.

## **6 Investigate Options for Additional Revenues from Mixed Plastics and Mixed Glass**

During the course of the Operational Audit, R3 verified that CCC is receiving competitive pricing for the recyclable materials that it markets. However, pricing comparisons for mixed plastics and mixed glass were inconclusive; it may be the case that CCC could receive marginally increased revenues by modifying its processes and/or marketing for mixed plastics and mixed glass. R3 has conservatively estimated that CCC might be able decrease its annual shortfall by approximately \$10,000 via possible increases in revenue, pursuant to future research and identification of processes/markets for these materials.

## **7 Pilot Reduction of Buyback Payments for OCC and Mixed Paper**

R3 has reviewed the Buyback Center's prices paid to the public for materials including mixed paper and OCC (not CRV, which is regulated by the State). R3 believes that CCC could decrease the amounts paid out to the public for OCC and mixed paper, thereby increasing the marginal difference between what CCC pays out for those materials vs. what it is paid for them.

CCC currently pays out \$100,000 to \$125,000 per year for these materials. Marginal decreases (e.g. 10%) in the amounts paid out for those materials (currently \$75 per ton for OCC and \$50 per ton for mixed paper) could result in greater retained revenue for CCC, if payments were set such that CCC patrons continue to drop off those materials at CCC and don't sell their materials elsewhere.

R3 recommends that CCC develop a plan and pilot appropriately reduced payments to the public for these materials. If material volumes do not change, and CCC pays out 10% less per ton, CCC could retain upwards of \$10,000 to \$12,500 per year in revenues. We further recommend that CCC closely monitor the effects of the price change to ensure that net revenue is retained from this shift, and establish estimates regarding the price sensitivity of CCC's buyback customers.<sup>10</sup>

## **8 Pilot Closure of Buyback Center One Day per Week**

The Buyback Center is currently open to the public six days per week, and is a well-utilized element of CCC operations. As mentioned earlier in this Letter Report, CCC pays out \$1,000,000 annually to Buyback Center patrons, writing over 30,000 checks per year.

Theoretically, CCC could save \$5,000 to \$10,000 per year by closing the Buyback Center during the least busy day of the week. R3 estimates that this would not result in any changes in tonnages delivered to the facility; because very few options for buyback of materials remain in the area, patrons would likely deliver these materials to CCC on other open days. However, this assumption would also mean greater patronage on the remaining open days, potentially resulting in longer wait times at the Buyback Center and greater usage of staff time addressing customer concerns for that portion of the operation.

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<sup>10</sup> CCC could, in addition to piloting a reduction in payments to the public, also provide a plan to pilot increases in payments to the public; this could be a viable option for increasing overall Buyback Center revenues in the event that CCC would collect more tonnage a result of more favorable buyback pricing.



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## **9 Process New Tons from Berkeley Commercial Accounts**

The City has non-exclusive franchise agreements with a three waste haulers to service commercial accounts in the City. The City is currently planning to cease these agreement and provide commercial collection services to accounts that are currently served by non-exclusive haulers. When this occurs, the City will be in the position to direct this material to the MRF.

R3 has conducted a brief visual waste audit on commercial accounts not currently serviced by the City and has concluded that these accounts produce primarily fiber materials for recycling. At an estimated tonnage of 10 to 15 tons per day, processing such material would add approximately 2,500 to 4,000 tons of material yearly to the MRF. Accounting for increases in operating expenses as the fiber line, including implementation of Plan element #4, R3 estimates that these additional tons could yield net increases in revenues over expenses of \$115,000 to \$180,000, at current average annual market rates for mixed paper and OCC.

## **10 Plan Future Replacement of Container Line and Building**

From a building and equipment standpoint, the container sorting line is the major factor affecting CCC's overall efficiency. As noted elsewhere in this Letter Report, the container line is labor-intensive and inconveniently configured, resulting in double handling of materials and other inefficiencies. The building itself is not large enough to house and cover unsorted container stockpiles delivered by the City and the Ecology Center. The container line cannot continue to operate effectively into the future without significant upgrades.

It is important to note that the amount of material available for the MRF to process is limited by the fact that the amounts of inbound materials delivered to the MRF is relatively fixed; because of the size of the site, the dual-stream processing approach, and lack of ability to accept tons from surrounding communities (because these are generally collected single stream), there is a limit to the economies of scale that can be achieved at the MRF. As such, replacing the container line and building may not increase overall MRF efficiency by an amount significant enough to fully counteract the cost of replacement and reduce overall operation expense.<sup>11</sup>

Table 2 on the following page provides a ballpark estimate of the cost of replacing the container line, installing a separate baler, and constructing a new 18,000 square foot building to house all container sorting operations, including stockpiles of unprocessed materials. The total capital cost is estimated at approximately \$5.8 million.

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<sup>11</sup> It is for these same reasons that R3 is not recommending construction of a complete new MRF that would replace both the current container and fiber lines. Ultimately, whether via a dual-stream or single-stream system, it is very unlikely that enough tons could be directed to the MRF to facilitate cost-effective operations given the high investment cost in a complete new MRF facility.

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| <b>TABLE 2: Estimated Capital Costs for New Container Building and Line</b> |                            |
|-----------------------------------------------------------------------------|----------------------------|
| <b>New Building</b>                                                         |                            |
| Steel structural                                                            | \$ 510,000                 |
| Roof/interior                                                               | \$ 360,000                 |
| Bldg. Foundation                                                            | \$ 640,000                 |
| Mechanical Exhaust                                                          | \$ 110,000                 |
| Plumbing                                                                    | \$ 50,000                  |
| Misting and fire suppression                                                | \$ 80,000                  |
| Building Electrical                                                         | \$ 280,000                 |
| Mechanical/Electrical                                                       | \$ 270,000                 |
| Contingency (15%)                                                           | \$ 350,000                 |
| <i>Subtotal New Building</i>                                                | <i>\$ 2,650,000</i>        |
| <b>Equipment</b>                                                            |                            |
| Sorting Lines                                                               | \$ 1,500,000               |
| Baler                                                                       | \$ 250,000                 |
| Other Equipment                                                             | \$ 700,000                 |
| <i>Subtotal Equipment</i>                                                   | <i>\$ 2,450,000</i>        |
| <b>Engineering and Permitting Costs</b>                                     |                            |
| CEQA/Permits/Bonds (8%)                                                     | \$ 210,000                 |
| Design (10%)                                                                | \$ 270,000                 |
| Construction Admin. (8%)                                                    | \$ 210,000                 |
| <i>Subtotal Engineering and Permitting</i>                                  | <i>\$ 690,000</i>          |
| <b><i>Estimated Total Capital Costs</i></b>                                 | <b><i>\$ 5,790,000</i></b> |

If the City chooses to proceed with replacing the container sorting line and building there would likely be an interruption in container processing service that could last one year or more. During that time, the City and CCC would need to make alternative arrangements for the processing of containers, which would come at an additional cost above the costs discussed elsewhere in this Letter Report. These costs could potentially be avoided if the current container line were to continue operation while a new container line and building were constructed on a separate portion of the site.

### Accounting Changes

The following Strategic Action Plan elements have been identified by subconsultant Armanino via the separate Financial Audit.

#### **11 Full Examination of All Assets Maintained by CCC for Operations owned by the City and CCC**

Due to prior accounting practices by the City and CCC, MRF and Buyback Center assets are not clearly and consistently addressed in City and CCC accounting records. In keeping with Plan element #3, the City should be the responsible party for all MRF and Buyback assets. Going forward, the City and CCC should conduct a full assessment of the value of these assets in order to determine their current depreciable

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lifetime, a capital costs and maintenance plan, and accurate recording on the City's books. There is not a specific cost impact associated with these accounting actions; however, they are important in terms of clarifying the roles and responsibilities of each party in the future.

## **12 Conduct Competitive Procurement Process for Outsourced CCC Accounting Services**

CCC's current expenses for outsourced accounting services are approximately \$94,000 per year. Based on Armanino's experience with other similarly sized operations, we believe that these costs could be reduced by 30% to 50% as a result of a refined program and competitive bidding for these outsourced services. We recommend that CCC conduct a competitive procurement process for these services, as refined subject to the recommendations in the separate Financial Audit report to be provided by Armanino. R3 conservatively estimates a net annual shortfall reduction of \$30,000 as a result of competitive procurement and programmatic changes.

## **13 Reduce Liability Expense from CCC's Vacation Policy**

CCC's current union agreement states that any employee with over 100 hours of accrued vacation can request payout of up to 100 hours of accrued vacation leave. This has resulted in a potential payable liability of approximately \$42,000. We recommend that CCC consider negotiating with the union to change this policy and encourage vacation to be taken by employees in order to reduce this liability expense. R3 conservatively estimates a net annual shortfall reduction of \$3,000 as a result of implementing a change in this policy.

## **14 Eliminate CCC Expense for Revenue Share**

CCC is currently carrying a liability \$446,128 in unpaid revenue share due to the City. As discussed elsewhere in this Letter Report, the revenue share component of the current agreement between the City and CCC is not consistent with current market conditions and practices for other similar operations. We recommend that the liability for the unpaid revenue share through the end of the current agreement be eliminated and not carried forward in CCC's books in the future.

## **Projection of Overall Impact of Strategic Action Plan Elements**

Table 3, on the following page, provides a conservative projection of the overall impact of implementing the Strategic Action Plan elements described in this Letter Report. It should be emphasized that this is a conservative planning level projection that will require further analysis and refinement as the City and CCC work towards implementation of Strategic Action Plan elements. Key assumptions in Table 3 include:

- Implementation of Strategic Action Plan elements per the schedule in Attachment A;
- Implementation of City collection of commercial recyclables, and delivery to CCC, starting in 2018;
- Range of possible recyclables revenues ranging from 95% to 110% of 2016 revenue projections;
- City funding of capital investment items with reserves (financing is also available, but not modeled in Table 3); and
- Rate payer impacts for MRF shortfalls distributed to residential and commercial rate-payers in proportion to tonnages from each of these sectors.

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 Operational Audit and Strategic Action Plan for Community Conservation Centers  
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| TABLE 3: Projection of Overall Strategic Action Plan Financial Impacts |                  |                  |                     |                    |                    |                    |                    |
|------------------------------------------------------------------------|------------------|------------------|---------------------|--------------------|--------------------|--------------------|--------------------|
| Line Items                                                             | 2014<br>(Actual) | 2015<br>(Actual) | 2016<br>(Projected) | 2017<br>(Forecast) | 2018<br>(Forecast) | 2019<br>(Forecast) | 2020<br>(Forecast) |
| <b>Revenues</b>                                                        |                  |                  |                     |                    |                    |                    |                    |
| MRF (Low)                                                              | \$1,714,516      | \$1,542,802      | \$1,555,296         | \$1,470,000        | \$1,750,000        | \$1,750,000        | \$1,750,000        |
| MRF (High)                                                             |                  |                  |                     | \$1,710,000        | \$2,170,000        | \$2,170,000        | \$2,170,000        |
| Buyback Center (Low)                                                   | \$1,456,056      | \$1,310,228      | \$1,320,839         | \$1,250,000        | \$1,250,000        | \$1,250,000        | \$1,250,000        |
| Buyback Center (High)                                                  |                  |                  |                     | \$1,450,000        | \$1,460,000        | \$1,460,000        | \$1,460,000        |
| Subtotal Revenues (Low)                                                |                  |                  |                     | \$2,720,000        | \$3,000,000        | \$3,000,000        | \$3,000,000        |
| Subtotal Revenues (High)                                               | \$3,170,572      | \$2,853,031      | \$2,876,135         | \$3,160,000        | \$3,630,000        | \$3,630,000        | \$3,630,000        |
| <b>Expenses</b>                                                        |                  |                  |                     |                    |                    |                    |                    |
| MRF Operations                                                         | \$1,781,700      | \$1,793,690      | \$1,784,545         | \$1,790,000        | \$2,000,000        | \$2,000,000        | \$2,000,000        |
| Deferred Maintenance                                                   | \$ -             | \$ -             | \$ -                | \$ 20,000          | \$ 20,000          | \$ 20,000          | \$ 20,000          |
| Capital Depreciation (20 years)                                        | \$ -             | \$ -             | \$ -                | \$ -               | \$ 290,000         | \$ 290,000         | \$ 290,000         |
| Buyback Center Operations                                              | \$1,368,540      | \$1,395,890      | \$1,382,709         | \$1,390,000        | \$1,380,000        | \$1,380,000        | \$1,380,000        |
| Subtotal Expenses                                                      | \$3,150,240      | \$3,189,580      | \$3,167,255         | \$3,200,000        | \$3,690,000        | \$3,690,000        | \$3,690,000        |
| <b>Surplus (Shortfall)</b>                                             |                  |                  |                     |                    |                    |                    |                    |
| MRF (Smaller Shortfall)                                                | \$ (67,185)      | \$ (250,887)     | \$ (229,249)        | \$ (100,000)       | \$ (140,000)       | \$ (140,000)       | \$ (140,000)       |
| MRF (Larger Shortfall)                                                 |                  |                  |                     | \$ (340,000)       | \$ (460,000)       | \$ (460,000)       | \$ (460,000)       |
| Buyback Center (Smaller Shortfall)                                     | \$ 87,516        | \$ (85,662)      | \$ (61,871)         | \$ 60,000          | \$ 80,000          | \$ 80,000          | \$ 80,000          |
| Buyback Center (Larger Shortfall)                                      |                  |                  |                     | \$ (140,000)       | \$ (130,000)       | \$ (130,000)       | \$ (130,000)       |
| Subtotal (Smaller Shortfall)                                           | \$ 20,331        | \$ (336,549)     | \$ (291,120)        | \$ (40,000)        | \$ (60,000)        | \$ (60,000)        | \$ (60,000)        |
| Subtotal (Larger Shortfall)                                            |                  |                  |                     | \$ (480,000)       | \$ (590,000)       | \$ (590,000)       | \$ (590,000)       |
| <b>MRF Rate-Payer Impact (Monthly)</b>                                 |                  |                  |                     |                    |                    |                    |                    |
| Residential (Low)                                                      | \$ (0.20)        | \$ (0.60)        | \$ (0.60)           | \$ (0.30)          | \$ (0.40)          | \$ (0.40)          | \$ (0.40)          |
| Residential (High)                                                     |                  |                  |                     | \$ (0.90)          | \$ (1.20)          | \$ (1.20)          | \$ (1.20)          |
| Commercial (Low)                                                       | \$ (0.50)        | \$ (1.80)        | \$ (1.60)           | \$ (0.70)          | \$ (1.00)          | \$ (1.00)          | \$ (1.00)          |
| Commercial (High)                                                      |                  |                  |                     | \$ (2.40)          | \$ (3.20)          | \$ (3.20)          | \$ (3.20)          |
| <b>MRF Per Ton Costs</b>                                               |                  |                  |                     |                    |                    |                    |                    |
| Low                                                                    | \$ (6)           | \$ (22)          | \$ (20)             | \$ (9)             | \$ (9)             | \$ (9)             | \$ (9)             |
| High                                                                   |                  |                  |                     | \$ (30)            | \$ (30)            | \$ (30)            | \$ (30)            |

## Funding Options

R3 recommends that the City adjust the solid waste collection, processing and disposal rates charged to Berkeley customers to provide funding for the future costs of processing recyclables through the MRF (as estimated in Table 3, above). Although annual Measure D funding provided to the City by StopWaste could be used for these purposes, in our opinion those funds are better utilized for making one-time improvements in Berkeley's diversion of solid waste materials from landfill. For example, those funds could be utilized by the City to fund capital investments at the MRF, and/or fund Buyback Center shortfalls.

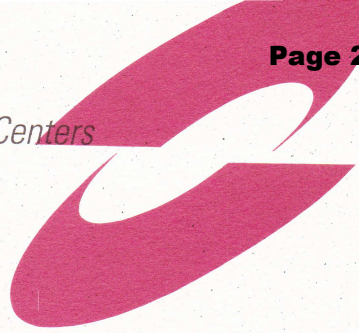
New capital investments in the MRF and/or the Buyback Center could be provided via financing options available via the CalRecycle Revolving Loan Program (<http://www.calrecycle.ca.gov/RMDZ/Loans/>) and the California Pollution Control Financing Authority (<http://www.treasurer.ca.gov/cpcfca/calcap/>).

**ATTACHMENT A**  
**CCC Strategic Action Plan - Implementation Worksheet**

| #  | Description                                                                                      | Annual Net Shortfall Reduction (Increase) | Labor Impacts                   | Associated Impacts                                 | Required Resources                                  | Implementation Tasks                              | Responsible Party | Completion Schedule |
|----|--------------------------------------------------------------------------------------------------|-------------------------------------------|---------------------------------|----------------------------------------------------|-----------------------------------------------------|---------------------------------------------------|-------------------|---------------------|
| 1  | <b>New Compensation Arrangement for Materials Delivered to the MRF</b>                           | \$ -                                      | None.                           | CCC financial stability.                           | Staff time for negotiations.                        | Negotiation of terms and execution of agreement.  | City and CCC.     | June 2017.          |
| 2  | <b>Separately Fund Buyback Center Operations</b>                                                 | \$ -                                      | None.                           | CCC tracking and reporting.                        | Tracking and reporting systems.                     | Negotiation of terms and execution of agreement.  | City and CCC.     | June 2017.          |
| 3  | <b>Clarify Roles and Responsibilities between the City and CCC</b>                               | \$ -                                      | None.                           | Capital and maintenance investment.                | Capital and maintenance funding.                    | Negotiation of terms and execution of agreement.  | City and CCC.     | June 2017.          |
| 4  | <b>Install OCC Screen on Fiber Line</b>                                                          | \$ 55,000                                 | 2 FTE reduction.                | Reconfiguration of fiber line components.          | Financing for \$350,000 capital investment.         | Design, financing, procurement, installation.     | City and CCC.     | September 2017.     |
| 5  | <b>Install New Baler for Fiber Line</b>                                                          | \$ (25,000)                               | None.                           | Short-term marginal cost reductions.               | Capital for \$250K baler over 10 year period.       | Design, financing, procurement, installation.     | City and CCC.     | September 2017.     |
| 6  | <b>Investigate Options for Additional Revenues from Mixed Plastics and Mixed Glass</b>           | \$ 10,000                                 | None.                           | None.                                              | Staff time for investigations.                      | Investigate, evaluate, and implement as feasible. | City and CCC.     | June 2017.          |
| 7  | <b>Pilot Reduction of Buyback Payments for OCC and Mixed Paper</b>                               | \$ 10,000                                 | None.                           | Potential reduction in materials received.         | Staff time for analysis, outreach and education.    | Design, analyze, implement and monitor.           | CCC.              | June 2017.          |
| 8  | <b>Pilot Closure of Buyback Center One Day per Week</b>                                          | \$ 5,000                                  | 0.17 FTE reduction.             | Potential reduction in materials received.         | Staff time for analysis, outreach and education.    | Design, analyze, implement and monitor.           | CCC.              | December 2017.      |
| 9  | <b>Process New Tons from Berkeley Commercial Accounts</b>                                        | \$ 115,000                                | Potential increase in FTE, TBD. | Increased site congestion and backlog.             | Additional staffing and implementation of #4 & #5.  | Analyze, plan, and prepare.                       | CCC.              | December 2017.      |
| 10 | <b>Plan Future Upgrades to Container Line and Building</b>                                       | \$ (290,000)                              | TBD.                            | Potential ability to process additional materials. | ~\$5.8M principal capital investment over 20 years. | Design, financing, procurement, construction.     | City and CCC.     | December 2017.      |
| 11 | <b>Full Examination of All Assets Maintained by CCC for Operations owned by the City and CCC</b> | \$ -                                      | None.                           | Impacts to City / CCC accounting systems.          | Staff time for processing accounting changes.       | Analyze, plan, and execute transactions.          | City and CCC.     | December 2017.      |
| 12 | <b>Conduct Competitive Bidding Process for Outsourced CCC Accounting Services</b>                | \$ 30,000                                 | None.                           | Improvement to accounting systems.                 | Staff time for conducting procurement process.      | Conduct procurement process and transition.       | CCC.              | December 2016.      |
| 13 | <b>Reduce Liability Expense from CCC's Vacation Policy</b>                                       | \$ 3,000                                  | Benefit reduction.              | Reduction in gross liability.                      | Staff time to implement new policy.                 | Negotiate, draft and implement new policy.        | CCC.              | June 2017.          |
| 14 | <b>Eliminate CCC Expense for Revenue Share</b>                                                   | \$ -                                      | None.                           | Impacts to City / CCC accounting systems.          | Staff time for processing accounting changes.       | Analyze, plan, and execute transactions.          | City and CCC.     | June 2017.          |

Community Conservation Centers

Berkeley's  
Multi-Material  
Recycling Center



October 30, 2018

Ms. Dee Williams-Ridley, City Manager  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

RE: Request by Community Conservation Centers, dba Berkeley Recycling, for Forgiveness from Current Financial Obligation to City of Berkeley

Dear Ms. Williams-Ridley:

I am writing to you in my capacity as President of the Board of Community Conservation Centers, dba Berkeley Recycling (CCC), to respectfully request that the City relieve CCC of its obligation to pay the City the amounts due and owing as a result of CCC's past commitment to pay the City 7.5% of its gross revenues to the City.

As this letter explains, the obligation became commercially impractical during the contract term, and forgiveness of the debt will be a benefit to the City by ensuring that the City and its citizens will have a viable recycling program through the contract extension period to help achieve its Zero Waste Goal.

CCC is a local, non-profit organization that has operated a full-service recycling program under contract with the City for more than 35 years. The program components are a drop-off; a buyback; a collection area for household hazardous wastes; and a dual-stream Materials Recovery Facility (MRF). Support for these programs by Berkeley citizens, together with the Ecology Center's dual-stream collection system and CCC's dual-stream MRF, provides the Berkeley community with a strong foundation for achieving the City's Zero Waste goal.

In 2011, CCC entered into a contract with the City that, in Section 2, required that it pay the City 7.5% of its gross revenues to the City. For several years when the prices for recycled goods were high, CCC was able to meet this obligation and operate the City's program. Over the years, CCC paid the City \$726,737.75 consistent with this obligation. As market prices fluctuated and operational costs increased, CCC was unable to meet this obligation. This situation made the obligation "commercially impractical."

In 2016, R3 Consulting Group advised the City the obligation was impractical in the attached "Letter Report of Audit Findings and Strategic Action Plan" concerning CCC in the following terms:

Recycling Facility  
669 Gilman Street  
Berkeley, CA 94710  
(510) 524-0113  
(510) 559-8001 fax

Financial Office  
1717 Fourth Street  
Berkeley, CA 94710  
(510) 526-9326  
(510) 526-9327 fax

City Manager Williams-Ridley, page 2

“CCC is currently carrying a liability \$446,128 in unpaid revenue share due to the City. As discussed elsewhere in this Letter Report, the revenue share component of the current agreement between the City and CCC is not consistent with current market conditions and practices for other similar operations. We recommend that the liability for the unpaid revenue share through the end of the current agreement be eliminated and not carried forward in CCC’s books in the future.”

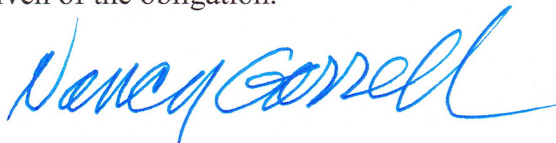
CCC has been transparent about this issue. The City has been generously providing emergency funding to CCC. In 2016, the City allocated \$181,719 to CCC so that its operations would not be interrupted. On May 30, 2017, the City again acted and allocated \$500,000 to CCC. Most recently, at its June 12, 2018 meeting, the City Council “provide[d] short term funding in the amount of \$699,815 for Community Conservation Centers Inc. to continue operations until September 30, 2018, while a long-term contract with the City is negotiated.” (See attached “June 12, 2018 Resolution”.)

We are pleased to report that those negotiations are complete. The contract extension CCC has signed with the City reflects the recommendations made by R3. The financial terms are designed to ensure that the City’s program can be sustained over the next 19 months. The extension gives the City ninety percent of the benefit of sales CCC achieved on recycled goods in markets.

The June 12, 2018 Resolution outlines the many public benefits achieved through the City’s programs operated by CCC. In addition to all the benefits outlined here and detailed in the June 12, 2018 Resolution, CCC has invested \$1,372,826.30 in capital that will become the City’s property upon termination of the contract. As of November 30, 2018, CCC estimates that it will owe the City \$1,123,732.01.

Notwithstanding these benefits, achievement of the benefits as embodied in the Zero Waste Goal depends upon CCC’s financial viability throughout the contract period. CCC’s costs will continue to rise and the Trump Administration’s trade policy has contributed to further deterioration of the market for recycled products. Thus, in the context of the work done by CCC and the City’s staff in achieving the contract extension, CCC respectfully requests that the accrued obligation under Section 2 of the 2011 contract be recognized as commercially impractical and CCC be forgiven of the obligation.

Respectfully submitted,



Nancy Gorrell, President, Board of Directors  
Community Conservation Centers

cc: Phillip Harrington, Director of Public Works  
Greg Apa, Solid Waste and Recycling Manager  
Heidi Obermeit, Recycling Program Manager  
Michael Woo, Deputy City Attorney/Risk Manager







Office of the City Manager

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Phillip L. Harrington, Director, Department of Public Works  
Subject: Contract: Ghilotti Construction Company for Panoramic Hill Rehabilitation Project

RECOMMENDATION

Adopt a Resolution approving plans and specifications for the Panoramic Hill Rehabilitation Project, Specification No. 18-11180-C (Re-Issued); accepting the bid of Ghilotti Construction Company as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$5,054,873.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available from the Street Capital Improvement Program budget. No other funding is required, and no other projects will be delayed due to this expenditure.

|                                |                    |
|--------------------------------|--------------------|
| Low bid by Contractor          | \$4,212,394        |
| 20% Contingency                | \$842,479          |
| <b>Total construction cost</b> | <b>\$5,054,873</b> |

FY 2019 Funding:

|                                                                                |                    |
|--------------------------------------------------------------------------------|--------------------|
| Street & Transportation Capital Improvement Program Funds                      |                    |
| State Transportation Tax (127-54-623-673-3012) .....                           | \$444,303          |
| Measure B Sales Tax (130-54-623-673-3012) .....                                | \$724,000          |
| Measure BB Sales Tax (134-54-623-673-3012) .....                               | \$1,123,234        |
| Capital Improvement Fund (501-54-623-673-3012) .....                           | \$1,436,509        |
| Road Maintenance & Rehabilitation Account (SB1)<br>(127-54-623-673-3012) ..... | \$677,531          |
| EBMUD (137-54-623-673-3012) .....                                              | \$120,000          |
| Measure M Streets & Watershed GO Bond (506-54-623-673-3012) .....              | \$529,296          |
| <b>Total construction cost</b>                                                 | <b>\$5,054,873</b> |

This contract has been assigned CMS No. KGZZS.

### CURRENT SITUATION AND ITS EFFECTS

This contract is for street rehabilitation initially designated to be performed in calendar year 2018. The project has gone through planning, coordinating with outside utility companies, preliminary cost estimates, field investigations, surveys, and extensive design prior to implementation. The Panoramic Hill Rehabilitation Project (Specification No. 18-11180-C) was released for bids on May 14, 2018, and bids were opened on May 31, 2018. One bid was received for \$4,993,384. On July 24, 2018, Council approved rejection of the bid and directed staff to re-advertise the work.

The Panoramic Hill Rehabilitation Project (Specification No. 18-11180-C (Re-Issued)) was re-released for bids on October 18, 2018 and bids were opened on November 15, 2018 (see Attachment 3, Abstract of Bids). Three non-local bids were received, from a low of \$4,212,394 to a high of \$5,249,158. Ghilotti Construction Company of Santa Rosa, California was the lowest responsive and responsible bidder, and their references were found to be satisfactory. Staff recommends a construction contract for the project be awarded to Ghilotti Construction Company. The consultant engineer's estimate for the project is \$3.8 million.

### BACKGROUND

Streets throughout Berkeley are scheduled for repaving as part of the City's Five-Year Street Paving Plan. This contract is for construction of approximately 1.3 miles of City streets and consists of reconstruction of selected streets as shown in Attachment 2: Location Map & List of Streets.

In addition to street pavement, the project incorporates many other improvements such as curb ramps, curbs, sidewalks, drainage inlets and pipes, gutters, and retaining walls. These non-pavement related costs represent approximately 40% of the construction costs.

The Living Wage Ordinance does not apply to this project since Public Works construction contracts are, pursuant to City policy, subject to State prevailing wage laws. Contractor has submitted a Certification of Compliance with the Equal Benefits Ordinance. The Community Workforce Agreement applies to this project because the estimated value of the project exceeds \$500,000. As a result, the successful bidder and all subcontractors will be required to sign an agreement to be bound by the terms of the Agreement.

The project plans and specifications are on file in the Public Works Department. In accordance with the requirements of the California Environmental Quality Act (CEQA), the project has been determined to be categorically exempt because it consists of maintenance of existing streets and does not expand their use beyond existing conditions.

### ENVIRONMENTAL SUSTAINABILITY

During analysis and revision of the Five-Year Street Paving Plan, the locations were analyzed for possible green infrastructure improvements to treat urban runoff before

entering the storm drain system. Due to the geography of the Panoramic Hill area, it would not be advisable to introduce water into the hillside since this could undermine the street. There is also insufficient right of way to construct green infrastructure facilities. Therefore, it was determined that green infrastructure improvements would be more beneficial at different paving locations.

#### RATIONALE FOR RECOMMENDATION

This street repair project is part of the City's ongoing annual program to rehabilitate deteriorated streets throughout the City. The work requires contracted services, as the City does not possess the in-house labor or equipment resources necessary to complete the project.

#### ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered for this pavement rehabilitation project. The City could choose not to proceed with this project. However, the street pavement and existing retaining wall would then continue to deteriorate and drainage improvements would not be made, affecting access and use by the community and others.

#### CONTACT PERSON

Andrew Brozyna, Deputy Director, Public Works (510) 981-6396  
Nisha Patel, Manager of Engineering & City Engineer, Public Works (510) 981-6406  
Joe Enke, Supervising Civil Engineer, Public Works (510) 981-6411

#### Attachments:

- 1: Resolution
2. Location Map & List of Streets for Project
- 3: Abstract of Bids

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

CONTRACT: GHILOTTI CONSTRUCTION COMPANY FOR PANORAMIC HILL  
REHABILITATION PROJECT

WHEREAS, the Panoramic Hill Rehabilitation Project is part of the City's ongoing Street Capital Improvement Program to rehabilitate deteriorated streets located throughout the City; and

WHEREAS, the City has neither the labor nor the equipment necessary to undertake this Panoramic Hill Rehabilitation Project; and

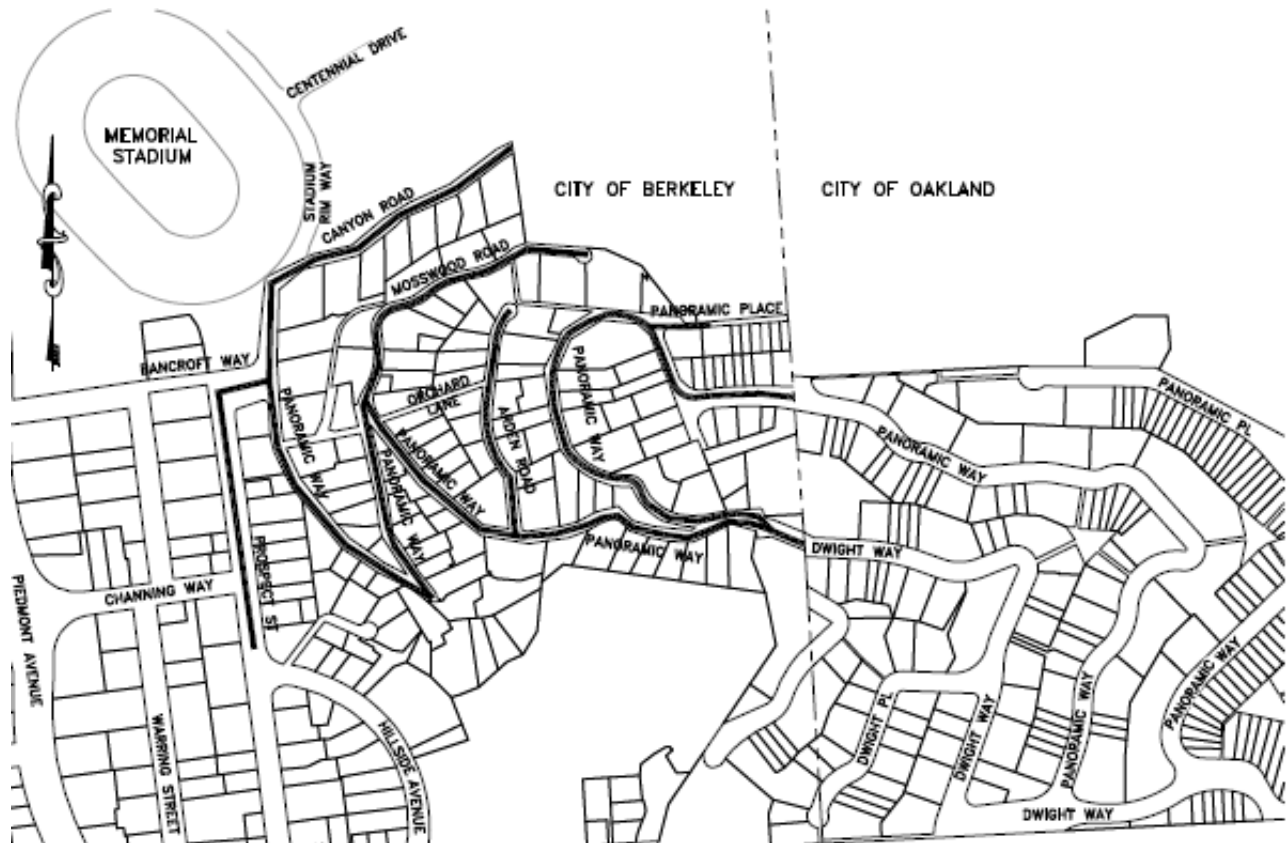
WHEREAS, an invitation for bids was duly advertised and Ghilotti Construction Company was the lowest responsive and responsible bidder; and

WHEREAS, funding is available in the current year budget in the Street and Transportation Capital Improvement Program State Transportation Tax (Fund 127), Measure B Sales Tax (Fund 130), Measure BB Sales Tax (Fund 134), Capital Improvement Fund (Fund 501), EBMUD (Fund 137); and Measure M Streets & Watershed GO Bond (Fund 506) and the contract has been entered into the Citywide contract database with CMS No. KGZZS.

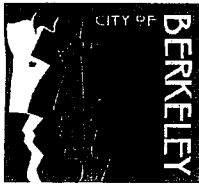
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 18-11180-C (Re-Issued) for the Panoramic Hill Rehabilitation Project are approved.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions or change orders, until completion of the project in accordance with the approved plans and specifications with Ghilotti Construction Company for the Panoramic Hill Rehabilitation Project, in an amount not to exceed \$5,054,873, which includes a 20% contingency for unforeseen circumstances. A record signature copy of said agreement and any amendments to be on file in the Office of the City Clerk.

Panoramic Hill Rehabilitation Project



| Street          | From      | To                                  |
|-----------------|-----------|-------------------------------------|
| Arden           | Panoramic | End                                 |
| Bancroft        | Prospect  | Panoramic                           |
| Canyon          | Bancroft  | #67 Canyon                          |
| Dwight          | Panoramic | East City Limit<br>(Oakland border) |
| Mosswood        | Panoramic | End                                 |
| Panoramic Place | Panoramic | #8 Panoramic Place                  |
| Panoramic Way   | Bancroft  | #340 Panoramic<br>(Oakland border)  |
| Prospect        | Hillside  | Bancroft                            |



City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

FOR: Panorama Hill Rehab (rebid)

Spec. # 18-1180-c

Bid Date:

|    | Bidders                             | Base Bid      | Nuc Free | Work Force Comp | Opp. States | Living Wage | EBO | Bid Bond | Addenda |
|----|-------------------------------------|---------------|----------|-----------------|-------------|-------------|-----|----------|---------|
| 1  | <del>Pub. Panorama Hill Rehab</del> | <del>\$</del> |          |                 |             |             |     |          |         |
| 2  | Interstate Power & Rehab            | 4,361,034.50  | /        |                 | /           |             | /   | /        | /       |
| 3  | Gallagher + Berk Inc.               | 5,117,613.00  | /        |                 | /           |             | /   | /        | /       |
| 4  | Ghidotti Construction               | 4,251,701.00  | /        |                 | /           |             | /   | /        | /       |
| 5  |                                     | 4,242,394.00  |          |                 |             |             |     |          |         |
| 6  |                                     |               |          |                 |             |             |     |          |         |
| 7  |                                     |               |          |                 |             |             |     |          |         |
| 8  |                                     |               |          |                 |             |             |     |          |         |
| 9  |                                     |               |          |                 |             |             |     |          |         |
| 10 |                                     |               |          |                 |             |             |     |          |         |

Bid Recorder: Bob Blackenship

Bid Opener: Sherrin Segnan 11/15/18

Project Manager: \_\_\_\_\_



Office of the City Manager

CONSENT CALENDAR

January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phil Harrington, Director, Public Works

Subject: Contract: TranSystems Corporation for Preliminary Engineering and Environmental Clearance for the Railroad Crossing Safety Improvement/Quiet Zone Project

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with TranSystems Corporation for Preliminary Engineering and Environmental Clearance for the Railroad Crossing Safety Improvement/Quiet Zone project, and any as-needed additional project-related services as directed by the City, for a total not-to-exceed contract amount of \$500,000, for the period February 1, 2019 through December 31, 2019.

FISCAL IMPACTS OF RECOMMENDATION

The project is funded by a grant from the Alameda County Transportation Commission (ACTC) using discretionary Alameda County Measure BB Sales Taxes. Funding will be recommended for appropriation through the second amendment to the appropriations ordinance in the Capital Project Grant Fund - Local (Fund 307) 307-54-622-662-0000-000-431-612310-PWTRCT1901.

Total contract not to exceed amount \$500,000.

This contract has been assigned CMS No. DA5CW.

CURRENT SITUATION AND ITS EFFECTS

In September 2018, the City released a Request for Proposals (RFP), Specification No. 19-11257-C, for Preliminary Engineering and Environmental Analysis for the Railroad Crossing Safety Improvement/Quiet Zone project. The consultant's scope in the RFP included the following tasks for the future upgrade of all seven at-grade railroad crossings in Berkeley (Gilman Street, Camelia Street, Cedar Street, Virginia Street, Hearst Avenue, Addison Street and Bancroft Way): kick-off meeting and final scope/schedule; document review, data collection, and field survey; stakeholder outreach and public engagement; traffic engineering studies; conceptual design; development of project plans and preliminary cost estimate to 35% design level; and environmental analysis, review, and clearance. These tasks are intended to build upon

the work of the City of Berkeley Railroad Quiet Zone Study final report, dated April 13, 2009.

Although the City received only one proposal in response to the RFP, City staff found that TranSystems Corporation's (TranSystems) proposal demonstrated their competency in all of the pre-established criteria: project understanding and work plan; qualifications, experience, and references; work samples; price proposal; and overall quality of the responses and conformance with RFP requirements for content. An interview with TranSystems reinforced City staff's evaluation of TranSystems as competent and well-qualified to perform the work of this project.

### BACKGROUND

The purpose of the Railroad Crossing Safety Improvement/Quiet Zone project is to explore the potential for implementation of a Quiet Zone on the Union Pacific Railroad corridor through the City of Berkeley. Quiet Zones are areas where locomotive engineers are not required to sound train warning horns as they approach at-grade crossings. Quiet Zone designations are authorized by the Federal Railroad Authority Administration the federal agency with oversight of the safety of the national rail system.

The local public authority may designate Quiet Zones when the safety measures at each grade crossing comply fully with one or more FRA "pre-approved" sets of measures (termed Supplemental Safety Measures, or SSMs) that have been determined to provide sufficient risk reduction. The SSMs must be sufficient to reduce the Quiet Zone risk index below the Nationwide Significant Risk Threshold, or below the Risk Index with Horns.

In 2018, the City was awarded a \$1.52 million grant by the ACTC. The purpose of the grant is to improve railroad crossing safety at each of the at-grade crossings in Berkeley in accordance with Railroad Quiet Zone standards established by the FRA. Improvements are anticipated to feature new gates for vehicles and bicyclists as well as sidewalk safety gates for pedestrians. The improvements may also include additional intersection treatments and traffic calming features to accommodate bicyclists and pedestrians crossing the at-grade crossings.

Of this grant, \$500,000 has been approved for public engagement, preliminary engineering to the 35% design stage, and environmental planning work; as per the grant requirements, this work must be completed by the end of the 2019 calendar year. The remainder of the grant, which covers preparation of final design documents, would be approved by the ACTC upon successful completion of the aforementioned initial tasks.

The work funded by the initial \$500,000 grant is anticipated to be the first phase of delivering the Railroad Crossing Safety Improvement/Quiet Zone project. With Council approval, staff anticipates applying for grant funding for the future construction phase previously estimated to be on the order of \$10 million.



ENVIRONMENTAL SUSTAINABILITY

As part of the development of the 2009 Quiet Zone study, community members cited impacts such as sleep disruption and other related health issues, interruption of business meetings and phone calls, and decline in property value and the quality of life as rationale for quiet zone implementation. The execution of this contract will help ensure the successful completion of the Railroad Crossing Safety Improvement/Quiet Zone project. By instituting a Quiet Zone, which will improve the safety of railroad crossing gates and reduce noise, the project is expected to improve the quality of life for employees and residents near at-grade railroad crossings in Berkeley.

Also, pedestrian and bicycle crossing improvements would encourage a reduction in the use of single occupancy vehicles, which would help the City achieve the Berkeley Climate Action Plan greenhouse gas emission reduction targets of 33% below year 2000 levels by the year 2020, and 80% below year 2000 levels by 2050.

RATIONALE FOR RECOMMENDATION

The proposal from TranSystems demonstrates that this team, including their proposed project manager, has extensive experience working with key railroad stakeholders and is well-qualified to provide the City with the needed public engagement, preliminary engineering, and environmental planning services for the Railroad Crossing Safety Improvement/Quiet Zone project. Furthermore, the TranSystems team is located in downtown Berkeley, within close proximity to City offices, which facilitates in-person meetings and enhanced coordination.

ALTERNATIVE ACTIONS CONSIDERED

The City considered (a) re-issuing the RFP in an effort to solicit more responses, and (b) managing all activities with staff resources, but City staff determined that TranSystems is well-qualified to perform the work, and there would not be sufficient time to ensure successful compliance and timely project delivery if either of these alternative actions were implemented. Execution of this contract will enable the City to complete the Railroad Crossing Safety Improvement/Quiet Zone project on time and within budget.

CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works (510) 981-7061  
Ken Jung, Associate Civil Engineer, Public Works, (510) 981-7028  
Beth Thomas, Principal Planner, Public Works, (510) 981-7068

Attachments:

1: Resolution

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

CONTRACT: TRANSYSTEMS CORPORATION FOR PRELIMINARY ENGINEERING AND ENVIRONMENTAL CLEARANCE FOR THE RAILROAD CROSSING SAFETY IMPROVEMENT/QUIET ZONE PROJECT

WHEREAS, the Public Works Department has determined that consultant assistance is needed for Preliminary Engineering and Environmental Clearance for the Railroad Crossing Safety Improvement/Quiet Zone project (Project); and

WHEREAS, in September 2018, the City of Berkeley released a Request for Proposal, Specification No. 19-11257-C, for the work of this Project, received one valid proposal by the due date of October 16, 2018, and reviewed it according to the RFP's scoring criteria; and

WHEREAS, after a thorough review and evaluation of the proposal, TranSystems Corporation was found to possess the requisite qualifications and experience and was deemed competent to perform the work of this Project; and

WHEREAS, the Project is an extension of the City of Berkeley's Railroad Quiet Zone Study that was approved by City Council in 2009; and

WHEREAS, \$500,000 of funding will be recommended for appropriation through the second amendment to the appropriations ordinance in the Capital Project Grant Fund – Local (Fund 307), and the contract has been entered in the contract management database with CMS No. DA5CW.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with TranSystems Corporation for Preliminary Engineering and Environmental Clearance for the Railroad Crossing Safety Improvement/Quiet Zone project, and any as-needed project-related services as directed by the City, for a total contract amount not to exceed \$500,000, for the period from February 1, 2019 to December 31, 2019. A record signature copy of said contract and any amendments is to be on file in the City Clerk Department.



CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Phillip L. Harrington, Director, Public Works  
 Subject: Contracts: On-Call Architectural Services: ELS Architecture and Urban Design; Noll & Tam Architects; and Siegel & Strain Architects

RECOMMENDATION

Adopt three Resolutions authorizing the City Manager to execute contracts and any amendments with the following firms for on-call architectural design services in support of the City’s annual Facilities Capital Improvement Program, each from February 1, 2019 through June 30, 2022:

1. ELS Architecture and Urban Design for an amount not to exceed \$1,700,000.
2. Noll & Tam Architects for an amount not to exceed \$1,700,000.
3. Siegel & Strain Architects for an amount not to exceed \$1,700,000.

FISCAL IMPACTS OF RECOMMENDATION

Initial funding for the on-call contracts is available in the Fiscal Year (FY) 2019 budget, as follows:

|                                                              |           |
|--------------------------------------------------------------|-----------|
| Capital Improvement Fund: 501-54-623-677-0000-000-444-612310 | \$100,000 |
| Measure T1 Fund: 511-54-623-677-0000-000-444-612310          | \$800,000 |

Funding for FY 2020 through FY 2022 is subject to appropriation in the capital improvement budget and will be identified as projects arise.

The CMS numbers assigned to these contracts are:

| CONSULTANT                        | CMS NO. |
|-----------------------------------|---------|
| ELS Architecture and Urban Design | G542J   |
| Noll & Tam Architects             | JZ868   |
| Siegel & Strain Architects        | WIKJR   |

CURRENT SITUATION AND ITS EFFECTS

Requests for Qualifications (RFQ) were issued on August 15, 2018 (Specification No. 18-11235-C) seeking qualified firms or individuals to provide on-call architectural design

services in support of the City's annual Facilities Capital Improvement Projects (CIP) program.

On September 11, 2018, the City received 15 proposals from architectural firms, which were evaluated by a review panel. ELS Architecture and Urban Design, Noll & Tam, and Siegel & Strain were determined to be the best qualified to meet the City's needs.

#### BACKGROUND

Over the next several years, the Engineering Division of the Public Works Department (PW) and the Parks, Recreation, and Waterfront Department (PRW) are expecting significantly increased workloads, resulting from deferred maintenance, on-going capital projects, and T1 projects. The first T1 phase will include design or construction of over twenty building facility projects during the next three years. Architectural consultants are necessary to support PW and PRW staff to complete these projects.

The City has used architectural consultants in the past to design and manage projects to supplement City staff. These include situations where the nature of the work is specialized, such as architectural design, electrical design, mechanical design, structural engineering, permitting, and construction administration. On-call consultants have also enabled the City to meet tight schedules when short-term work needs to be addressed. On-call contracts will provide adequate design and engineering services when needed.

#### ENVIRONMENTAL SUSTAINABILITY

The design of facility upgrades will address required American Disabilities Act and energy saving improvements and, when feasible, universal design and further environmentally sustainable upgrades.

#### RATIONALE FOR RECOMMENDATION

ELS Architecture and Urban Design, Noll & Tam, and Siegel & Strain have particular expertise in architectural design services. They were the top three ranked firms and are the best qualified to meet the City's needs.

City staff recommends awarding a contract to all three consultants to get the best value for the City, because it will distribute the anticipated workload, create an alternative source for services, and secure more competitive proposals.

#### ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered since the City needs assistance from architectural services firms to complete required work. Architectural design support will be critical to complete T1 projects within the established time frame.

#### CONTACT PERSON

Andrew Brozyna, Deputy Director of Public Works, (510) 981-6396  
Nisha Patel, City Engineer, Department of Public Works, (510) 981-6406  
Elmar Kapfer, Supervising Civil Engineer, Department of Public Works, (510) 981-6435

Contracts: On-Call Architectural Services

CONSENT CALENDAR  
January 22, 2019

**Attachments:**

- 1: Resolution: Contract with ELS Architecture and Urban Design
- 2: Resolution: Contract with Noll & Tam Architects
- 3: Resolution: Contract with Siegel & Strain Architects

RESOLUTION NO.:-N.S.

CONTRACT: ELS ARCHITECTURE AND URBAN DESIGN FOR ON-CALL  
ARCHITECTURAL SERVICES FOR CAPITAL IMPROVEMENT PROJECTS

WHEREAS, on August 15, 2018 the City released a Request for Qualifications (Specification No. 18-11235-C) seeking firms or individuals to provide on-call architectural design services for capital improvement projects; and

WHEREAS, on September 11, 2018, the City received 15 submissions, which were reviewed and rated; and

WHEREAS, the submission from ELS Architecture and Urban Design has been found to be fully qualified and responsive to the City's request; and

WHEREAS, funding will be identified and requested for appropriation as projects arise, and the contract has been entered into the citywide contract database and assigned CMS No. G542J; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to approve a contract and any amendments with ELS Architecture and Urban Design for on-call architectural design services for capital improvement projects for the contract period of February 1, 2019 through June 30, 2022 in an amount not to exceed \$1,700,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

RESOLUTION NO.:-N.S.

CONTRACT: NOLL & TAM ARCHITECTS FOR ON-CALL ARCHITECTURAL SERVICES FOR CAPITAL IMPROVEMENT PROJECTS

WHEREAS, on August 15, 2018 the City released a Request for Qualifications (Specification No. 18-11235-C) seeking firms or individuals to provide on-call architectural design services for capital improvement projects; and

WHEREAS, on September 11, 2018, the City received 15 submissions, which were reviewed and rated; and

WHEREAS, the submission from Noll & Tam Architects has been found to be fully qualified and responsive to the City's request; and

WHEREAS, funding will be identified and requested for appropriation as projects arise, and the contract has been entered into the citywide contract database and assigned CMS No. JZ868; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to approve a contract and any amendments with Noll & Tam Architects for on-call architectural design services for capital improvement projects for the contract period of February 1, 2019 through June 30, 2022 in an amount not to exceed \$1,700,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

RESOLUTION NO.:-N.S.

CONTRACT: SIEGEL & STRAIN ARCHITECTS FOR ON-CALL ARCHITECTURAL SERVICES FOR CAPITAL IMPROVEMENT PROJECTS

WHEREAS, on August 15, 2018 the City released a Request for Qualifications (Specification No. 18-11235-C) seeking firms or individuals to provide on-call architectural design services for capital improvement projects; and

WHEREAS, on September 11, 2018, the City received 15 submissions, which were reviewed and rated; and

WHEREAS, the submission from Siegel & Strain Architects has been found to be fully qualified and responsive to the City's request; and

WHEREAS, funding will be identified and requested for appropriation as projects arise, and the contract has been entered into the citywide contract database and assigned CMS No. WIKJR; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to approve a contract and any amendments with Siegel & Strain Architects for on-call architectural design services for capital improvement projects for the contract period of February 1, 2019 through June 30, 2022 in an amount not to exceed \$1,700,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.





Civic Arts Commission

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council  
 From: Civic Arts Commission  
 Submitted by: Kim Anno, Chairperson, Civic Arts Commission  
 Subject: Authorization for Additional Civic Arts Commission Meeting in 2019

RECOMMENDATION

Adopt a Resolution authorizing one additional meeting of the Civic Arts Commission in 2019.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Civic Arts Commission requests approval to hold a Special Meeting on February 9, 2019 as a retreat in order to have dedicated time to review progress on the *City of Berkeley Arts & Culture Plan 2018-2027 Update* and the *Civic Arts Commission 2018-2019 Work Plan*. Submission of this report for authorization of the additional meeting was approved by the Civic Arts Commission at its November 28, 2018 meeting (M/S Blecher / Passmore; Yes: Anno, Blecher, Bullwinkel, Ozol, Passmore, Slattery, Tamano; No: none; Absent: Jackson, Ross).

BACKGROUND

Resolution No. 68,705–N.S. governs the number of meetings for boards and commissions and authorizes the Civic Arts Commission to meet ten times per year. In 2019, the Civic Arts Commission plans to hold its ten regular meetings in addition to this Special Meeting.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The additional meeting requested for February 2019 will provide an opportunity for the Commission to have uninterrupted time to focus on the review of progress on the previously approved *Arts and Culture Plan* and *Annual Work Plan* and to discuss activities for 2019 in furtherance of the goals and objectives outlined in these plans.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Jennifer Lovvorn, Secretary to the Civic Arts Commission, (510) 981-7533

Attachments:

1: Resolution

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

AUTHORIZING ADDITIONAL MEETING FOR THE CIVIC ARTS COMMISSION

WHEREAS, Resolution No. 68,705–N.S. stipulates how many annual meetings are allowed for Berkeley’s commissions and authorizes the Civic Arts Commission to meet ten times per year.; and

WHEREAS, the Civic Arts Commission plans to hold an additional meeting in February 2019 to review progress on the *City of Berkeley Arts & Culture Plan 2018-2027 Update* and the *Civic Arts Commission 2018-2019 Work Plan*.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Civic Arts Commission is authorized to hold one additional meeting in 2019.





Office of the Mayor

CONSENT CALENDAR  
January 22, 2019

To: Members of the City Council

From: Mayor Jesse Arreguín  
Councilmember Cheryl Davila  
Councilmember Kate Harrison  
Councilmember Rigel Robinson

Subject: Support a Green New Deal

### RECOMMENDATION

Adopt a Resolution supporting the development of a Green New Deal, a federal economic stimulus program to address climate change and transform the economy. Send a copy of the Resolution to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and Governor Gavin Newsom.

### BACKGROUND

A report published in October 2018 by the UN Intergovernmental Panel on Climate Change warns that we have a twelve year window to avoid cataclysmic climate change by preventing global temperatures from increasing beyond 1.5°C of pre-industrial levels. The report emphasizes the scale and speed of transformation at all levels of the economy that will be required, including rapid and far-reaching transitions in land, energy, industry, buildings, transport, and cities. Global net human-caused emissions of CO<sup>2</sup> would need to decrease approximately 45 percent from 2010 levels by 2030, reaching 'net zero' by 2050. This means that any remaining emissions would need to be balanced by removing CO<sup>2</sup> from the atmosphere.<sup>1</sup>

The City of Berkeley and its residents are deeply committed to sustainability and addressing climate change. Voters overwhelmingly approved Measure G in 2006, leading to the adoption of the Berkeley Climate Action Plan in 2009 - setting the goal of reducing greenhouse gas emissions by 33% of 2000 levels by 2020, and 80% by 2050. Building on this plan, the award-winning Berkeley Resiliency Strategy was developed in 2016, in part to ensure that Berkeley is "resilient and prepared for the impacts of global warming". In June 2018, the Berkeley City Council unanimously declared a climate emergency, and this past November, nearly 85 percent of voters approved Measure R, to develop a long-term sustainable infrastructure plan known as Vision 2050.

<sup>1</sup><https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>

Despite all the work already accomplished and in the pipeline, much of our infrastructure – streets, roads, sidewalks, storm drains, parks, the marina and waterfront – were constructed more than 70 years ago during the Works Projects Administration. Although the \$100 million-dollar Measure T1 infrastructure bond was approved by voters on November 8, 2016, and will be used to repair, renovate, replace or reconstruct aging infrastructure and facilities, our restoration needs far exceed what this bond can achieve. At the same time, we are faced with rapidly changing technologies and exponentially worsening predictions of climate change impacts.

Through Vision 2050 – a 30-year plan to identify and guide implementation of climate-smart, technologically-advanced, integrated and efficient infrastructure - Berkeley's infrastructure will be transformed, mirroring the scale of what was accomplished during the original New Deal. However, it will be much more challenging to accomplish this effort through local and regional funding strategies that compete against numerous municipal needs. Undoubtedly, a Green New Deal as outlined below would accelerate the work already underway in our city, moving us closer to a resilient and sustainable vision that our community supports. Replacing our infrastructure in this manner also provides a historic opportunity to create jobs, community wealth and address historically rooted racial and gender inequities.

A Green New Deal is a framework for an evolving set of policies and programs that aims to both tackle climate change and also transform the economy. A groundswell of momentum has emerged amongst newly elected Democratic leaders and activists. Led by Congresswoman Alexandria Ocasio-Cortez and the Sunrise Movement, by the end of November 2018, eighteen Democratic members of Congress, including Congresswoman Barbara Lee, have co-sponsored a proposed House Select Committee on a Green New Deal.

The Green New Deal is the only plan, or framework to develop one, that meets the scale and scope of transformation that science and justice demand. The primary environmental goals for a Green New Deal are<sup>2</sup>:

- 1) Dramatically expanding existing renewable power sources and deploy new production capacity with the goal of meeting 100% of national power demand through renewable sources;
- 2) Building a national, energy-efficient, “smart” grid;
- 3) Upgrading every residential and industrial building for state-of-the-art energy efficiency, comfort and safety;
- 4) Eliminating greenhouse gas emissions from the manufacturing, agricultural and other industries, including by investing in local-scale agriculture in communities across the country;

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<sup>2</sup> <https://ocasio2018.com/green-new-deal>

- 5) Eliminating greenhouse gas emissions from, repairing and improving transportation and other infrastructure, and upgrading water infrastructure to ensure universal access to clean water;
- 6) Funding massive investment in the drawdown of greenhouse gases;
- 7) Making “green” technology, industry, expertise, products and services a major export of the United States, with the aim of becoming the undisputed international leader in helping other countries transition to greenhouse gas neutral economies, and bringing about a global Green New Deal.

The framework also recognizes that, “a national, industrial, economic mobilization of this scope and scale is a historic opportunity to virtually eliminate poverty in the United States and to make prosperity, wealth and economic security available to everyone participating in the transformation”<sup>3</sup>. To this end, it includes a job guarantee program, the diversification of local and regional economies, strong labor enforcement, a just transition for all, protection of tribal and indigenous lands, and the mitigation of racial and gender wealth gaps.

The objectives outlined for a Green New Deal not only reflect Berkeley’s ongoing efforts to mitigate climate change, but also our commitment to social, economic and racial justice. Examples of overlap include support for economic development programs and policies such as those supporting worker ownership, a public bank, initiatives supporting our homeless, and efforts to construct more affordable housing. Supporting a Green New Deal is in alignment with Berkeley’s continuous efforts to strive for equality, diversity, affordability, and our efforts to prevent climate catastrophe.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

Supporting a plan for a Green New Deal will further the goals set forward in the Climate Action Plan and Resiliency Strategy by providing massive federal investment in our city, region and nation’s efforts responding to climate change impacts and actualizing a more resilient city.

#### CONTACT PERSON

Mayor Jesse Arreguín                      510-981-7100

Attachments:

1. Resolution

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<sup>3</sup> Ibid





RESOLUTION NO. #####  
EXPRESSING BERKELEY'S SUPPORT FOR A SELECT COMMITTEE FOR A  
GREEN NEW DEAL

WHEREAS, human activities have warmed the Earth enough to end the 12,000-year period of climate stability that allowed agriculture and human civilization to develop; and

WHEREAS, the world came together in December 2015 to address the end to this period of climate stability due to global warming, agreeing to keep warming to "well below 2°C above pre-industrial levels" and to "pursue efforts to limit the temperature increase to 1.5°C"; and

WHEREAS, in 2017 the global surface temperature was over 1°C warmer than the pre-industrial base period; and

WHEREAS, global warming has already set in motion catastrophic changes to the Earth system, including accelerating ice mass loss from the Greenland and West Antarctic Ice Sheets and the thawing of the borders of the vast Arctic permafrost, which holds twice as much stored carbon as the entire atmosphere; and

WHEREAS, according to the latest climate projections, humanity is on track to warm the Earth a sustained average of 1.5°C above pre-industrial levels as soon as 2026; and

WHEREAS, the Greenland Ice Sheet, which is likely to completely collapse at 1.6°C warming, which NASA scientists have concluded would lead to 23 feet of sea-level rise, billions of climate refugees, and a "global-scale catastrophe"; and

WHEREAS, it is estimated that sustained 1.5°C warming could cause a long-term, "continuous thaw" of the Arctic permafrost, which could turn the tundra from a carbon sink into source in the 2020s; and

WHEREAS, such tipping points must be avoided at all costs, as they will have positive feedback effects on the climate system, causing further and increasingly uncontrollable global warming; and

WHEREAS, over 19,000 scientists have signed a Second Warning to Humanity proclaiming that "a great change in our stewardship of the Earth and the life on it is required, if vast human misery is to be avoided"; and

WHEREAS, climate-fueled droughts, famines, and diseases have already killed millions of people in the Global South, and displaced millions more; and

WHEREAS, indigenous and low-income communities and communities of color in the United States and abroad have suffered the gravest consequences of the extractive economy since its inception; and

WHEREAS, according to the National Centers for Environmental Information (NCEI), in 2017, "the U.S. was impacted by 16 separate billion-dollar disaster events tying 2011 for the record number of billion-dollar disasters for an entire calendar year," with a cumulative cost of \$309.5 billion, shattering the previous U.S. annual record cost of \$219.2 billion in 2005 due to Hurricanes Dennis, Katrina, Rita and Wilma; and

WHEREAS, the UN Intergovernmental Panel on Climate Change warns that there is a twelve-year window for global warming to be kept to a maximum threshold of 1.5C increase above pre-industrial levels; and

WHEREAS, we cannot wait for more devastating floods, heatwaves, fires, droughts, rising sea levels, and public health and humanitarian crises that threaten local residents, ecologies, businesses, and the broader Bay Area population to begin the necessary emergency response; and

WHEREAS, the City of Berkeley is deeply committed to sustainability and addressing climate change; and

WHEREAS, voters overwhelmingly approved Measure G in 2006, and the Berkeley Climate Action Plan was adopted in 2009 - setting the goal of reducing greenhouse gas emissions by 33% of 2000 levels by 2020, and 80% by 2050; and

WHEREAS, the award-winning Berkeley Resilience Strategy was developed in 2016, building upon one of the Climate Action Plan goals to ensure Berkeley is "resilient and prepared for the impacts of global warming"; and

WHEREAS, in declaring a Climate Emergency the City of Berkeley resolved to call on the United States of America to initiate a just national emergency mobilization effort to reverse global warming, which ends national greenhouse gas emissions as quickly as possible and immediately initiates an effort to safely draw down carbon from the atmosphere; and

WHEREAS, much of our infrastructure – streets, roads, sidewalks, storm drains, parks, the marina and waterfront – that is foundational were constructed more than 70 years ago during the Works Projects Administration; and

WHEREAS, in the face of these challenges we need to have infrastructure that is more sustainable and resilient; and

WHEREAS, we also have technology that is rapidly changing and infrastructure systems must be flexible and adaptable to future needs. Emerging technologies are becoming available that will affect the way we build and use our future infrastructure; and

WHEREAS, Berkeley needs integrated and long-lasting infrastructure to provide multiple benefits, and be environmentally and financially sustainable; and

WHEREAS, Berkeley voters overwhelmingly approved Measure R in November 2018 to create a “30-year plan to identify and guide implementation of climate-smart, technologically-advanced, integrated and efficient infrastructure to support a safe, vibrant and resilient future for Berkeley; and

WHEREAS, replacing our infrastructure in this manner also provides a historic opportunity to create jobs, community wealth and address historically rooted racial and gender inequities; and

WHEREAS, a plan for a Green New Deal is the only plan, or framework to develop one, that meets the scale and speed that the climate and justice demand; and

WHEREAS, the plan for a Green New Deal reflects Berkeley’s climate and environmental commitments, as well as other elements of its economic development efforts such as the promotion of worker ownership, public banking, labor protections, and job training; and

WHEREAS, the Green New Deal calls for a nationwide investment in renewable energy infrastructure that would procure 100% of the national power demand from renewable sources, and create a national smart grid; and

WHEREAS, if passed the Green New Deal would accelerate current efforts underway county-wide through the creation of the East Bay Community Energy Authority, and local efforts to expand local renewable development, making existing and new buildings energy efficient and carbon neutral; and

WHEREAS, if passed a Green New Deal would expedite and enhance the important work already underway in Berkeley and provide much needed additional funding to allow our city to go farther and faster in these efforts.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports the formation of a House Select Committee on a Green New Deal and the development of a Green New Deal economic stimulus plan; and

BE IT FURTHER RESOLVED the City Council thanks Congresswoman Barbara Lee for her endorsement of a Green New Deal and calls on all leaders in Congress to endorse such a plan; and

BE IT FURTHER AND FINALLY RESOLVED that copies of this Resolution be sent to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and Governor Gavin Newsom.



Office of the Mayor

CONSENT CALENDAR

January 22, 2019

To: Members of the City Council

From: Mayor Jesse Arreguín  
Councilmember Susan Wengraf  
Councilmember Lori Droste  
Councilmember Sophie Hahn

Subject: Support of SB 18 – Keep Californians Housed Act

RECOMMENDATION

Adopt a Resolution in support of Senate Bill (SB) 18, the Keep Californians Housed Act, introduced by Senator Nancy Skinner. Send a copy of the Resolution to Senator Skinner, Assemblymember Buffy Wicks, and Governor Gavin Newsom.

BACKGROUND

California is facing a rental housing crisis. According to an analysis by the National Low Income Housing Coalition, the State has only 22 affordable and available rental homes for every 100 extremely low-income households. About 29 percent of California renters spend more than one-half of their income on rent, which can make it difficult for families to afford basic items like food, clothing, transportation, and health care. In 2015, more than four in 10 households had housing costs that exceeded 30 percent of household income.

Due to the lack of supply and subsidized housing, rents in California cities are some of the highest in the nation. According to the most recent Market Median Report by the Berkeley Rent Board, the median for a 1-bedroom apartment in 2017 was \$2,027 and \$2,800 for a 2-bedroom apartment. Rents in Berkeley have increased by 50-67% in the last five years. These rates do not reflect market rents in newly constructed buildings.<sup>1</sup>

Rising housing costs and the lack of affordable housing has resulted in a displacement crisis in the Bay Area. According to the UC Berkeley Urban Displacement Project, large parts of Berkeley, Oakland, Richmond San Francisco are facing Ongoing Displacement, and in some census tracts Advanced Gentrification.<sup>2</sup>

<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Rent\\_Stabilization\\_Board/Level\\_3\\_-\\_General/INFO\\_Market%20Medians%20report%20through%20Q4\\_2017.pdf](https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/INFO_Market%20Medians%20report%20through%20Q4_2017.pdf)

<sup>2</sup> "Mapping Displacement and Gentrification in the San Francisco Bay Area", UC Berkeley Urban Displacement Project, <http://www.urbandisplacement.org/map/sf>

There are a variety of reasons why we are seeing an increase in displacement, including the lack of available and affordable housing, speculative evictions, and circumstances which affect an individual's ability to pay rent (illness, death in family, job loss, and/or sudden rent increase). The limited supply of affordable housing, rising rental prices, deepening income inequality and increasing pressure by property owners to evict tenants in order to achieve higher rents have all exacerbated the problem.

The displacement of tenants has also deepened the region's homeless crisis. For example, according to the 2017 Berkeley Point-In-Time Homeless Count, 76% of those surveyed had previously resided in Alameda County. The majority of our city's homeless population are also chronically homeless, meaning they have been unhoused for one year or more.

Helping tenants who are at risk of displacement is one of the most effective ways in preventing homelessness. Once a person becomes homeless, breaking that cycle can be costly, stress inducing, and time consuming.

In recognition of this growing displacement crisis, in June 2017, the Berkeley City Council through adoption of its biennial budget allocated \$650,000 in both Fiscal Year 2018 and Fiscal Year 2019 towards eviction defense, emergency rental assistance and housing retention programs from Measure U1 tax receipts.

Alameda County also increased its financial commitments to such services last year providing Boomerang Funds for a country-wide legal defense program. This year Oakland Mayor Libby Schaaf announced a \$9 million dollar privately-funded program to provide eviction defense and rental assistance. While these programs have been effective in preventing homelessness, the scale of the displacement crisis requires significantly more funding.

A statewide approach is needed to provide legal support for renters facing displacement to level the playing field. If a renter receives an Unlawful Detainer and is unaware of their rights and responsibilities or is unable to appear in court, they lose their housing. Low-income renters need additional legal support to help them navigate the court system and remain housed.

Senate Bill 18 (SB 18), introduced by State Senator Nancy Skinner would create a statewide Homelessness Prevention and Legal Aid fund, which would provide funding for legal defense for tenants facing eviction and displacement. The bill would also create a guide of laws relating to landlord-tenant relations, allowing people to more easily understand their rights.

SB 18 is an important step to ensure that tenants throughout the state can defend themselves from eviction, supplementing local efforts to provide anti-displacement resources. Through the adoption of SB 18 and a state budget appropriation, we can significantly increase the number of tenants served through legal defense services.

The Berkeley Rent Stabilization Board voted to support the concepts provided in the bill as written at its December 17, 2018 meeting.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín                      510-981-7100

Attachments:

- 1: Resolution
- 2: Text of SB 18

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

SUPPORTING SB 18 – THE KEEP CALIFORNIANS HOUSED ACT

WHEREAS, California is facing a rental housing crisis. According to an analysis by the National Low Income Housing Coalition, the State has only 22 affordable and available rental homes for every 100 extremely low-income households; and

WHEREAS, about 29 percent of California renters spend more than one-half of their income on rent, which can make it difficult for families to afford basic items like food, clothing, transportation, and health care. In 2015, more than four in 10 households had housing costs that exceeded 30 percent of household income; and

WHEREAS, due to the lack of supply and subsidized housing, rents in California cities are some of the highest in the nation; and

WHEREAS, according to the most recent Market Median Report by the Berkeley Rent Board, the median for a 1-bedroom apartment in 2017 was \$2,027 and \$2,800 for a 2-bedroom apartment. Rents in Berkeley have increased by 50-67% in the last five years; and

WHEREAS, rising housing costs and the lack of affordable housing has resulted in a displacement crisis in the Bay Area; and

WHEREAS, there are a variety of reasons why we are seeing an increase in displacement, including the lack of available and affordable housing, speculative evictions, and circumstances which affect an individual's ability to pay rent (illness, death in family, job loss, sudden rent increase); and

WHEREAS, if a renter receives an Unlawful Detainer and is unaware of their rights and responsibilities or is unable to appear in court, they lose their housing. Low-income renters need additional legal support to help them navigate the court system and remain housed; and

WHEREAS, the displacement of tenants has also deepened the region's homelessness crisis. According to the 2017 Berkeley Point-In-Time Homeless Count, 76% of those surveyed had previously resided in Alameda County. The majority of our city's homeless population are also chronically homeless, meaning they have been unhoused for one year or more; and

WHEREAS, helping tenants who are at risk of displacement is one of the most effective ways in preventing homelessness. Once a person becomes homeless, breaking that cycle can be costly, stress inducing, and time consuming; and



WHEREAS, in recognition of this growing displacement crisis, in June 2017, the Berkeley City Council allocated \$650,000 in both Fiscal Year 2018 and Fiscal Year 2019 towards eviction defense, emergency rental assistance and housing retention programs from Measure U1 tax receipts; and

WHEREAS, while these programs have been effective in preventing homelessness, the scale of the displacement crisis requires significantly more funding. A statewide approach is needed to provide legal support for renters facing displacement to level the playing field.

WHEREAS, Senate Bill 18, introduced by State Senator Nancy Skinner would create a statewide Homelessness Prevention and Legal Aid fund, which would provide funding for legal defense for tenants facing eviction and displacement. The bill would also create a guide of laws relating to landlord-tenant relations, allowing people to more easily understand their rights; and

WHEREAS, SB 18 is an important step to ensure that tenants throughout the state can defend themselves from eviction, supplementing local efforts to provide anti-displacement resources.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 18, the Keep Californians Housed Act; and

BE IT FURTHER AND FINALLY RESOLVED that copies of this Resolution be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, and Governor Gavin Newsom.

**SENATE BILL**

**No. 18**

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**Introduced by Senator Skinner**  
**(Coauthors: Senators Beall and Wiener)**  
(Coauthors: Assembly Members Bonta and Wicks)

December 3, 2018

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An act to add Sections 50467 and 50490.6 to, and to add Chapter 4 (commencing with Section 50570) to Part 2 of Division 31 of, the Health and Safety Code, relating to housing, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as introduced, Skinner. Keep Californians Housed Act.

Existing law establishes the Department of Housing and Community Development and requires, among other things, that it update and provide a revision of the California Statewide Housing Plan to the Legislature every 4 years, as provided.

This bill, no later than January 1, 2021, would require the department to develop and publish on its Internet Web site, and to annually update, a guide to all state laws pertaining to landlords and the landlord-tenant relationship. The bill would also require the department to survey each city in this state to determine which cities, if any, provide resources or programs to inform landlords of their legal rights and obligations and to post on its Internet Web site a list of those cities which, in the judgment of the department, have the most robust resources and programs.

Existing law requires the department to administer, among other housing programs, the California Emergency Solutions and Housing Program. Under that program, the department allocates grants to administrative entities, as defined, to be used for specified eligible activities, including rental assistance and housing relocation and

stabilization services to ensure housing affordability to people experiencing homelessness or at risk of homelessness.

This bill would appropriate an unspecified sum from the General Fund to the department, to be used to provide statewide competitive grants for rental assistance under the California Emergency Solutions and Housing Program, as provided. The bill would also establish the Homelessness Prevention and Legal Aid Fund and require moneys in the fund to be used, upon appropriation, to provide legal aid to tenants facing eviction or displacement in the form of competitive grants awarded by the department, as provided.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Keep Californians Housed Act.
- 3 SEC. 2. The Legislature finds and declares the following:
- 4 (a) California is experiencing a rental housing crisis. According
- 5 to analysis by the National Low Income Housing Coalition,
- 6 California has only 22 affordable and available rental homes for
- 7 every 100 extremely low income households.
- 8 (b) Due in part to lack of supply, California cities have some
- 9 of the highest rents in the nation. San Francisco’s rent is the most
- 10 expensive in the country, averaging \$3,300 per month for a
- 11 one-bedroom unit, and San Jose, Oakland, Los Angeles, and
- 12 Anaheim are all in the top 10 for highest rents in the nation.
- 13 (c) About 29 percent of California renters spend more than
- 14 one-half of their income on rent, which can make it difficult for
- 15 families to afford basic items like food, clothing, transportation,
- 16 and health care. In 2015, more than four in 10 households had
- 17 housing costs that exceeded 30 percent of household income.
- 18 (d) The housing crisis harms families across California and has
- 19 resulted in higher levels of homelessness or displacement of
- 20 previously housed individuals and families. One quarter of the
- 21 nation’s homeless population, and half of the nation’s unsheltered
- 22 homeless, now live in California.
- 23 (e) Providing emergency financial assistance and legal aid to
- 24 keep residents from being evicted will prevent evictions and
- 25 potentially break the cycle of poverty.

1 SEC. 3. Section 50467 is added to the Health and Safety Code,  
2 to read:

3 50467. (a) (1) No later than January 1, 2021, the department  
4 shall develop and publish on its Internet Web site a guide to all  
5 state laws pertaining to landlords and the landlord-tenant  
6 relationship. The department shall update the guide annually  
7 thereafter.

8 (2) In developing the guide required by this subdivision, the  
9 department shall include a template for cities and counties to add  
10 information pertaining to their ordinances regulating the  
11 landlord-tenant relationship. The department shall make the guide,  
12 along with the template required by this paragraph, available to  
13 each city and each county in this state in a form that allows for a  
14 city or county to add information pertaining to its ordinances.

15 (b) The department shall survey each city in this state to  
16 determine which cities, if any, provide resources or programs to  
17 inform landlords of their legal rights and obligations. The  
18 department shall publish on its Internet Web site a list of those  
19 cities which, in the judgment of the department, have the most  
20 robust resources and programs.

21 SEC. 4. Section 50490.6 is added to the Health and Safety  
22 Code, to read:

23 50490.6. (a) In addition to any other moneys made available  
24 for purposes of the program, the sum of \_\_\_\_ dollars (\$\_\_\_\_) is  
25 hereby appropriated, notwithstanding Section 13340 of the  
26 Government Code and without regard to fiscal year, from the  
27 General Fund to the department to be used as provided in this  
28 section.

29 (b) The department shall distribute funds made available  
30 pursuant to subdivision (a) to administrative entities in the form  
31 of grants awarded on a competitive basis. In administering this  
32 competitive grant program, the department shall award funds to  
33 administrative entities based on demonstrated need and ensure  
34 geographic diversity in the distribution of grant funds. Grants  
35 awarded to administrative entities pursuant to this section shall  
36 supplement, and shall not supplant, moneys otherwise allocated  
37 to them pursuant to subdivision (a) of Section 50490.2.

38 (c) An administrative entity that receives a grant pursuant to  
39 this section shall use the funds awarded pursuant to this section

SB 18

— 4 —

1 exclusively for those eligible activities described in paragraph (1)  
2 of subdivision (a) of Section 50490.4.

3 SEC. 5. Chapter 4 (commencing with Section 50570) is added  
4 to Part 2 of Division 31 of the Health and Safety Code, to read:

5

6 CHAPTER 4. HOMELESSNESS PREVENTION AND LEGAL AID

7

8 50570. (a) There is hereby created in the State Treasury the  
9 Homelessness Prevention and Legal Aid Fund.

10 (b) Upon appropriation by the Legislature, all moneys in the  
11 fund shall be used for the purpose of providing legal aid to tenants  
12 facing eviction, including by means of an unlawful detainer action  
13 pursuant to Chapter 4 (commencing with Section 1159) of Title 3  
14 of Part 3 of the Code of Civil Procedure, or displacement.

15 (c) The department shall distribute funds made available for  
16 purposes of this chapter in the form of grants awarded on a  
17 competitive basis, including grants to cities and counties to  
18 establish their own tenant legal aid programs, as provided by law.

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Office of the Mayor

CONSENT CALENDAR  
January 22, 2019

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: 2019 City Council Committee and Regional Body Appointments

RECOMMENDATION

Adopt a Resolution approving the appointment of Council representatives to City Council Standing Policy Committees, Partnership Committees, Regional Bodies, and Council Liaisons for a one-year term from January 2019 to January 2020.

BACKGROUND

There are a number of Council appointments to various Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions. The Mayor respectfully submits his recommendations for appointments to various regional committees and commissions.

On December 11, 2018, the City Council established a system of Standing Policy Committees. The Governing Policies and Procedures for Standing Policy Committees require appointment of committee members by the full Council no later than January 31st each year. The recommendations for those Standing Policy Committees are also included in the proposed resolution.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not Applicable.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Resolution

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

APPROVING APPOINTMENTS TO STANDING CITY COUNCIL POLICY COMMITTEES, PARTNERSHIP COMMITTEES, LIASIONS TO BOARDS AND COMMISSIONS AND REGIONAL BODIES FOR 2019

WHEREAS, the City Council has numerous appointments to various Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions, and must make new appointments every two years following the General Municipal Election; and

WHEREAS, six new Standing Policy Committees were established by the City Council on December 11, 2018; and

WHEREAS, pursuant to Resolution No. 68,726-N.S. and the Governing Policies and Procedures for Standing Policy Committees, appointments to Council Standing Policy Committees must be made by January 31st each year; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley officially makes the following appointments for the period ending January 31, 2020 or until new appointments are approved:

**City Council Standing Policy Committees:**

Agenda & Rules Committee

Appoint Mayor Arreguín, Vice-Mayor Wengraf and Councilmember Harrison

Budget & Finance Committee

Appoint Councilmember Davila, Councilmember Droste and Councilmember Kesarwani

Facilities, Infrastructure, Transportation, Environment & Sustainability Committee

Councilmember Davila, Councilmember Harrison and Councilmember Robinson

Public Safety Committee

Appoint Councilmember Bartlett, Councilmember Robinson and Vice-Mayor Wengraf

Land Use, Housing & Economic Development Committee

Appoint Councilmember Droste, Councilmember Hahn and Mayor Arreguín

Health, Life Enrichment, Equity & Community Committee

Appoint Councilmember Bartlett, Councilmember Hahn, and Councilmember Kesarwani

**Partnership Committees:**

4x4 Joint Task Force Committee on Housing: Rent Board/City Council

Appoint Mayor Arreguín, Councilmember Davila, Councilmember Harrison and Councilmember Robinson



3x3 Committee of the Berkeley City Council and the Berkeley Housing Authority  
Appoint Councilmember Davila, Councilmember Harrison and Councilmember Kesarwani

2x2 Committee of the City Council and the Board of Education  
Appoint Mayor Arreguín and Councilmember Hahn  
Appoint Councilmember Droste as Alternate

**Regional Committees:**

Alameda County Transportation Commission  
Appoint Mayor Arreguín  
Appoint Councilmember Droste as Alternate

Alameda County Waste Management Authority  
Appoint Vice-Mayor Wengraf  
Appoint Councilmember Hahn as Alternate

Association of Bay Area Governments  
Appoint Councilmember Bartlett  
Appoint Councilmember Kesarwani as Alternate

Joint Powers Authority - East Bay Community Energy Authority  
Appoint Mayor Arreguín  
Appoint Councilmember Harrison as Alternate

Joint Powers Authority - East Bay Sports Field Recreation  
Appoint Mayor Arreguín  
Appoint Councilmember Davila as Alternate

Joint Powers Authority - Lead Abatement  
Appoint Vice-Mayor Wengraf  
Appoint Councilmember Droste as Alternate

League of California Cities - East Bay Division  
Appoint Councilmember Harrison  
Appoint Councilmember Robinson as Alternate

Oakland Airport Noise Forum  
Appoint Councilmember Davila

**Council Liaisons to City Boards and Commissions:**

Board of Library Trustees  
Appoint Councilmember Hahn

Community Health Commission  
Appoint Councilmember Kesarwani

Mental Health Commission  
Appoint Councilmember Davila



Susan Wengraf, Vice Mayor

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council  
 From: Vice Mayor Wengraf, and Councilmembers Hahn, Droste, and Kesarwani  
 Subject: Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade

RECOMMENDATION

Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade, and honor the 46<sup>th</sup> anniversary of its passage with a proclamation.

BACKGROUND

Forty-six years ago, on January 22, 1973, the U.S. Supreme Court announced its decision in Roe v. Wade, a challenge to a Texas statute that made it a crime to perform an abortion unless a woman's life was at stake. The case had been filed by "Jane Roe," an unmarried woman who wanted to safely and legally end her pregnancy. Siding with Roe, the Supreme Court struck down the Texas law recognizing, for the first time, that the constitutional right to privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy" (Roe v. Wade, 1973).

Roe has come to be known as the case that legalized abortion nationwide. At the time the decision was handed down, nearly all states outlawed abortion. Roe rendered these laws unconstitutional, making abortion services safer and more accessible to women throughout the country.

Given the current heightened threat to reproductive choice in America, it is critically important to reaffirm Berkeley's commitment to a woman's right to reproductive health choices. Policies enacted at the Federal level could potentially affect access to services even in California.

January 22, 2019 will be the 46<sup>th</sup> anniversary of the decision that effectively legalized abortion in the United States. The City has traditionally marked the anniversary with a proclamation recognizing the anniversary. The City continually passes resolutions denouncing the fraudulent media campaigns against Planned Parenthood and has expressed continued support for access to all reproductive healthcare services and all reproductive healthcare providers. The City also adopted a resolution against proposed funding cuts to the Title X Family Planning program, the only federal program dedicated solely to providing low income women and men with comprehensive family planning and related preventive health services.

The state of California has a history of supporting a woman's personal decisions regarding her reproductive health, including abortion. In 2012, California led the nation in being the only state to pass legislation expanding access to reproductive health care with AB 2348 expanding access to birth control. In 2013 the Legislature passed AB 154 and AB 980, improving abortion access.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

Access to birth control, abortion and reproductive health services is critical to the attainment of our environmental goals.

CONTACT PERSON

Susan Wengraf, Council District 6, 510-981-7160

Attachments:

- 1: Resolution
- 2: Proclamation

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

REAFFIRMING THE CITY OF BERKELEY'S COMMITMENT TO ROE V. WADE

WHEREAS, January 22, 2019 marks the 46<sup>th</sup> anniversary of the historic Supreme Court decision, Roe v. Wade, which legalized abortion and recognized women's freedom of reproductive choice as essential to the lives, rights, health and equality of women; and

WHEREAS, Prior to 1973, the year when Roe v. Wade was enacted, women faced significant obstacles to safe reproductive health services, resulting in widespread loss of life and serious illness; and

WHEREAS, Individual states are passing laws banning rights to abortion: Mississippi and Kentucky banned abortion after 15 weeks and 11 weeks of gestation, respectively. Iowa banned abortions after a fetal heartbeat is detected, which it typically six weeks, before most women even know they are pregnant. These laws demonstrate a pattern of attempts to reverse Roe v Wade.

WHEREAS, The right to safe, legal and accessible abortion continues to be undermined by various federal initiatives, threatening the health and safety of women's lives, including the most marginalized women: low-income women, women of color, refugee and immigrant women.

WHEREAS, Throughout the Bay Area, hundreds of health care workers have devoted their careers to ensuring that the women of the Bay Area have access to safe and legal reproductive health services, while often putting their own safety at great risk due to harassment and violent opposition; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF BERKELEY that we RECOGNIZE AND CELEBRATE THE 46<sup>th</sup> ANNIVERSARY OF ROE V. WADE and praise the perilous and self-sacrificing work of the healthcare providers who face threats and violence for providing safe and legal health services to women throughout the Bay Area.

NOW FURTHER BE IT RESOLVED that the City of Berkeley re-affirms its commitment to: the human rights afforded to all women under Roe v. Wade, regardless of socioeconomic, ethnic, racial, cultural or religious background, age or sexual orientation and to opposing any laws or regulations that pose a threat to abortion, reproductive, sexual freedom and self-determination.

PROCLAMATION

REAFFIRMING THE CITY OF BERKELEY'S COMMITMENT TO ROE V. WADE

WHEREAS, January 22, 2019 marks the 46<sup>th</sup> anniversary of the historic Supreme Court decision, Roe v. Wade, which legalized abortion and recognized women's freedom of reproductive choice as essential to the lives, rights, health and equality of women; and

WHEREAS, Prior to 1973, the year when Roe v. Wade was enacted, women faced significant obstacles to safe reproductive health services, resulting in widespread loss of life and serious illness; and

WHEREAS, Individual states are passing laws banning rights to abortion: Mississippi and Kentucky banned abortion after 15 weeks and 11 weeks of gestation, respectively. Iowa banned abortions after a fetal heartbeat is detected, which it typically six weeks, before most women even know they are pregnant. These laws demonstrate a pattern of attempts to reverse Roe v Wade.

WHEREAS, The right to safe, legal and accessible abortion continues to be undermined by various federal initiatives, threatening the health and safety of women's lives, including the most marginalized women: low-income women, women of color, refugee and immigrant women.

WHEREAS, Throughout the Bay Area, hundreds of health care workers have devoted their careers to ensuring that the women of the Bay Area have access to safe and legal reproductive health services, while often putting their own safety at great risk due to harassment and violent opposition; and

NOW THEREFORE, BE IT PROCLAIMED BY THE CITY OF BERKELEY that we RECOGNIZE AND CELEBRATE THE 46<sup>th</sup> ANNIVERSARY OF ROE V. WADE and praise the perilous and self-sacrificing work of the healthcare providers who face threats and violence for providing safe and legal health services to women throughout the Bay Area.

NOW FURTHER BE IT PROCLAIMED that the City of Berkeley re-affirms its commitment to: the human rights afforded to all women under Roe v. Wade, regardless of socioeconomic, ethnic, racial, cultural or religious background, age or sexual orientation and to opposing any laws or regulations that pose a threat to abortion, reproductive, sexual freedom and self-determination.

Mayor Jesse Arreguin

Vice Mayor Susan Wengraf

Councilmember Lori Droste

Councilmember Sophie Hahn

Councilmember Cheryl Davila

Councilmember Kate Harrison

Councilmember Ben Bartlett

Councilmember Rashi Kersarwani

Councilmember Rigel Robinson







Berkeley City Council, District 5  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704  
(510) 981-7150  
shahn@cityofberkeley.info

ACTION CALENDAR

January 22, 2019~~December 11, 2018~~

To: Honorable Mayor and Members of the City Council  
From: Councilmember Sophie Hahn and Mayor Jesse Arreguín  
Subject: Single Use Disposable Foodware and Litter Reduction Ordinance

RECOMMENDATION

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to:
  - a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”).
  - b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing Reusable Foodware requirements for eating on the premises.
  - c. Create a Reusable Takeout Foodware program for launch three years after the effective date of the Single Use Disposable Foodware and Litter Reduction Ordinance, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste.
  - d. Prior to launch of the Reusable Takeout Foodware program, draft for approval amendments to the Single Use Disposable Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers.
  - e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.
  - f. Prior to January 1, 2022 report to the City Council on progress towards full implementation of and compliance with the Single Use Disposable Foodware and Litter Reduction Ordinance and these referrals.

3. Refer to the City Manager to determine funding and staffing needs and sources of funds to implement each program/phase. Consider and suggest implementation alternatives to achieve similar results at lower cost to the City, if any. Submit recommended alternatives to the Zero Waste Commission and City Council for consideration, and funding allocations or requests to the budget process.

### FINANCIAL IMPLICATIONS

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management. Even for "recyclable" items that are properly placed in a recycling bin, these items are costly to sort and process and have limited markets resulting in additional costs to the City. Many of these items result in contamination to the composting program which increases the cost of composting.

Staff time will be required to launch programs related to the Single Use Foodware and Litter Reduction Ordinance. Some programs and services may be provided by community partners at relatively low cost. Once launched, staff time for administration and enforcement of the Ordinance will be limited.

Costs, sources of funding and community partnerships to be determined by the City Manager.

### BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, "clamshells" and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. Because the environmental costs of these products is largely hidden to the business operator and consumer, little attention is paid to the quantity of packaging consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging. SUDs often become litter; therefore, minimizing their use will assist the City with achieving stormwater program requirements and ~~could~~ can reduce costs for maintenance of full trash capture devices that the City has installed in stormdrains.

## **Environmental Impacts of Single-Use Disposables**

[Worldwide](#), the production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California.<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter.<sup>2</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish.<sup>3</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year.

Most SUDs are used for just a few minutes before becoming waste, while [at the same time](#), most are made to last for hundreds and even thousands of years, [and have with](#) broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>4</sup>

Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater<sup>5</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>6</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>7</sup>

<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> Ellen MacArthur Foundation (2016)

<sup>4</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

<sup>5</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646-1654.

<sup>6</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>7</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

### **Strategies to Regulate SUDs**

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>8</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002, equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>9</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>10</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>11</sup>

There is growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>12</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>13</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>14</sup>

### **Reducing SUDs in the City of Berkeley**

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation’s first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. The city reached a height of 78% waste diversion by AB 939 standards, and there has

<sup>8</sup> “Successful Results from Bag Ordinance”, 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

<sup>9</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>10</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>11</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>12</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>13</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>14</sup> “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

been a 50% reduction in solid waste disposal between 2000 to 2013<sup>15</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly-difficult to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as “biodegradable” or “made from plants,” which misleads consumers to believe it is compostable) contaminates compost, adding costs and reducing the quality of compost<sup>16</sup>. With China’s recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City’s collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of single-use food and beverage packaging.

Thanks to the leadership of Berkeley’s Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active-experts, residents and volunteers, the City Council unanimously referred a proposed Single Use Disposable Foodware and Litter Reduction ordinance to the Zero Waste Commission on April 24, 2018.

The Zero Waste Commission was tasked with review of the proposed ordinance and the conduct of community meetings to gather feedback on the proposed ordinance, and make recommendations. Since that time, the Zero Waste Commission Foodware Subcommittee conducted 4 community meetings between June and September of 2018, and collected comments from over 60 restaurateurs, environmental advocates, members of the disability community, and other community members. Meetings were held on different days and times of the day, at locations throughout Berkeley, and were noticed to the restaurant and food service community with the help of the City’s Economic Development staff. The Commission analyzed comments received in writing and through public testimony, and on September 24, 2018 unanimously referred their findings to the City Council (Attachment 2).

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<sup>15</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

<sup>16</sup> Clean Water Action, *What’s in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

In addition, Councilmember Hahn met on-site with the owners of three restaurants that expressed concerns about implementation of the proposed ordinance, reviewing their current practices and challenges. All three have already implemented important measures to reduce the use of harmful Single Use Disposables, and shared important insights.

### ***Ordinance Elements***

The attached ordinance (Attachment 1) incorporates many of the Zero Waste Commission's recommendations and makes a number of changes to accommodate concerns and questions that were discussed as part of the Commission's public process. Changes include:

- Phasing-in elements of the ordinance, to allow Prepared Food Vendors time to adjust practices.
- Opportunities for limited exemptions, based on demonstrated hardship or extraordinary circumstances.
- Establishment of mini-grant and technical assistance programs, to help Prepared Food Vendors transition to Reusable and Compostable Foodware.
- Elimination of charges for all Single Use Disposable Foodware, except for cups, pending establishment of a Reusable Takeout Foodware program.
- Addition of standards for Prepared Food Vendors to reject customer-supplied cups that appear inappropriate or unsanitary.
- Addition of a recommendation that Prepared Food Vendors customarily offering straws keep a supply of compostable bioplastic straws for use by individuals specifically requesting "plastic" straws.
- Enforcement with notice and opportunities to cure, either by adopting practices or obtaining a waiver, if warranted, prior to imposition of [any](#) fines or other penalties.

### ***City Manager Referral Components***

To complement the roll out of the Single Use Disposable Foodware and Litter Reduction Ordinance, the Zero Waste Commission recommends a number of City-sponsored programs to support implementation of the Ordinance's requirements, including:

- A mini-grant program to help cover one-time costs associated with the transition to Reusable Foodware for on-site dining;
- Technical assistance to support implementation of ordinance requirements.

~~[These are included in this referral. Both programs must be operative by June 2019, six months before the key elements of the ordinance take effect.](#)~~

It is incumbent upon the City to further expand composting resources – potentially including compost receptacles - for residents and customers. Many restaurants do provide composting receptacles in-store currently, but many residential countertop kitchen pails are too small to accommodate a significant increase in compostable foodware, which is expected with widespread adoption of the Single Use Foodware and Litter Reduction Ordinance. [Also, current trash receptacles in the public right of way do not accommodate compostables.](#) The expansion of composting collection efforts also supports the goals and requirements of AB1826 and SB1383 to divert organics from the landfill, [and is included in this referral. As a community, Berkeley will not reap the benefits of substituting compostables for plastic single use foodware unless the collection and composting of these items are actually achieved.](#)

### ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

### CONTACT PERSON

Councilmember Sophie Hahn, District 5, (510) 981-7150  
Mayor Jesse Arreguín, (510) 981-7100

### Attachments

1. Single Use Foodware and Litter Reduction Ordinance, amended to incorporate Zero Waste Commission recommendations
2. Zero Waste Commission recommendations to City Council, September 24, 2018
3. Referral to the Zero Waste Commission: Berkeley Single Use Foodware and Litter Reduction Ordinance, April 24, 2018

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION ~~ORDINANCE~~

Sections:

- 11.64.010 [Findings and Purposes](#)
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all [prepared](#) food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 ~~Ordinance Chapter~~ supersedes existing laws and regulations

**11.64.010 [Findings and Purposes.](#)**

The ~~e~~Council [of the City of Berkeley](#) finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.



- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, ~~and p~~ Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. ~~In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the~~ City's waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City, that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. ~~Reduction of single-use food and beverage packaging furthers this goal.~~
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, ~~in~~ 2017, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, and alcoholic beverages ~~and other drinks~~.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include ~~tops~~, lids, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in [sectionSection](#) 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

**11.64.040 Reusable Customer Cups**

- A. [Except as provided in Chapter 11. Temporary Food Facilities of the California Health and Safety Code, Section 114353, C](#)customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) [and as amended](#). Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup [that conforms to the Disposable Foodware Standards in 11.64.070](#) for a beverage to be consumed off the premises, with any charge required pursuant to [sectionSection](#) 11.64.050.D.

**11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards [at-in sectionSection](#) 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards [at-in](#) 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards [at-in](#) 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.

- ~~a.1.~~ \_\_\_\_\_ Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor ~~and used for the purposes set forth in Section 11.64.100.C for use in its discretion.~~
  - ~~b.2.~~ \_\_\_\_\_ All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
  - ~~e.3.~~ \_\_\_\_\_ Charges for Disposable Cups shall be identified separately on any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms and/or menu boards ~~and on any receipt provided to the customer~~. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at ~~section~~Sections 11.64.050, ~~subsections (A)-(C)~~, a Prepared Food Vendor may request a waiver or waivers pursuant to ~~section~~Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
- ~~a.1.~~ \_\_\_\_\_ No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards ~~at in s~~Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
  - ~~b.2.~~ \_\_\_\_\_ The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
  - ~~e.3.~~ \_\_\_\_\_ The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
  - ~~d.4.~~ \_\_\_\_\_ Records of attempts to obtain a compliant item shall include:

    - ~~i.a.~~ \_\_\_\_\_ Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.

~~ii.b.~~ Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.

~~iii.c.~~ Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and

~~iv.d.~~ Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

~~e-5.~~ Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

#### **11.64.060 Reusable Foodware for Dining on the Premises (i.e. "Eating-in")**

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in ~~section~~Section 11.64.070.
- B. Notwithstanding the requirements at ~~section~~Section 11.64.060\_(A), Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California State Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.

~~D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after January 1, 2019 shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060\_(A). Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060\_(A) shall be~~

~~included as a specific condition of approval for such permits and licenses.~~

**11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.
- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of ~~each~~ the next calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code and other Prepared Food Vendors that provide full bussing service and do not customarily provide waste receptacles for customer use, must provide at least one set of three easily accessed receptacles ~~each~~ for discarded items to be composted, ~~or~~ recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - ~~a~~-1.        Blue for recyclables
  - ~~b~~-2.        Green for compostables
  - ~~c~~-3.        Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant. Notwithstanding the above, in certain limited, and -unique circumstances existing prior to adoption of this ordinance, where the prepared food vendor demonstrates diligent efforts to comply but, due to insurmountable space and/or economic constraints, may never be reasonably able to comply, the City Manager may grant a waiver for a longer specified term. Any such longer term waiver shall expire automatically in the event of a significant remodel or alteration of the premises or if the Prepared Food Vendor ceases operations at the location for which the waiver has been granted.
- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

~~E.~~

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- ~~C. All charges collected by the Prepared Food Vendor pursuant to section Section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
  - ~~a. Costs associated with complying with the requirements of this Chapter.~~~~

- ~~b. Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.~~
- ~~c. Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.~~
- ~~d. Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City wide system of Reusable Foodware for Takeout Food.~~

**11.64.110 Duties responsibilities and authority of the City of BerkeleyCity Manager's Powers**

The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

~~A. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.~~

**11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards at-in Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 Liability and Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.



- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.64.140 Severability**

~~If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional. If any part or provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable.~~

**11.64.150 Ordinance Chapter supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulation ~~s. restricting the use of polystyrene foam.~~

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



ACTION CALENDAR

January 22, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Sophie Hahn and Mayor Jesse Arreguin  
Subject: Single Use Disposable Foodware and Litter Reduction Ordinance

RECOMMENDATION

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to:
  - a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”).
  - b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing Reusable Foodware requirements for eating on the premises.
  - c. Create a Reusable Takeout Foodware program for launch three years after the effective date of the Single Use Disposable Foodware and Litter Reduction Ordinance, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste.
  - d. Prior to launch of the Reusable Takeout Foodware program, draft for approval amendments to the Single Use Disposable Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers.
  - e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.
  - f. Prior to January 1, 2022 report to the City Council on progress towards full implementation of and compliance with the Single Use Disposable Foodware and Litter Reduction Ordinance and these referrals.
3. Refer to the City Manager to determine funding and staffing needs and sources of funds to implement each program/phase. Consider and suggest

implementation alternatives to achieve similar results at lower cost to the City, if any. Submit recommended alternatives to the Zero Waste Commission and City Council for consideration, and funding allocations or requests to the budget process.

### FINANCIAL IMPLICATIONS

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management. Even for "recyclable" items that are properly placed in a recycling bin, these items are costly to sort and process and have limited markets resulting in additional costs to the City. Many of these items result in contamination to the composting program which increases the cost of composting.

Staff time will be required to launch programs related to the Single Use Foodware and Litter Reduction Ordinance. Some programs and services may be provided by community partners at relatively low cost. Once launched, staff time for administration and enforcement of the Ordinance will be limited.

Costs, sources of funding and community partnerships to be determined by the City Manager.

### BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, "clamshells" and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. Because the environmental costs of these products is largely hidden to the business operator and consumer, little attention is paid to the quantity of packaging consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging. SUDs often become litter; therefore, minimizing their use will assist the City with achieving stormwater program requirements and can reduce costs for maintenance of full trash capture devices that the City has installed in stormdrains.

### ***Environmental Impacts of Single-Use Disposables***

Worldwide, the production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California.<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter.<sup>2</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish.<sup>3</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year.

Most SUDs are used for just a few minutes before becoming waste, while at the same time, most are made to last for hundreds and even thousands of years, with broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>4</sup>

Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater<sup>5</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>6</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>7</sup>

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<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> Ellen MacArthur Foundation (2016)

<sup>4</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

<sup>5</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646-1654.

<sup>6</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>7</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

### **Strategies to Regulate SUDs**

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>8</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002, equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>9</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>10</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>11</sup>

There is growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>12</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>13</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>14</sup>

### **Reducing SUDs in the City of Berkeley**

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation’s first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. The city reached a height of 78% waste diversion by AB 939 standards, and there has

<sup>8</sup> “Successful Results from Bag Ordinance”, 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

<sup>9</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>10</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>11</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>12</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>13</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>14</sup> “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

been a 50% reduction in solid waste disposal between 2000 to 2013<sup>15</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is difficult to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as “biodegradable” or “made from plants,” which misleads consumers to believe it is compostable) contaminates compost, adding costs and reducing the quality of compost<sup>16</sup>. With China’s recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City’s collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of single-use food and beverage packaging.

Thanks to the leadership of Berkeley’s Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous experts, residents and volunteers, the City Council unanimously referred a proposed Single Use Disposable Foodware and Litter Reduction ordinance to the Zero Waste Commission on April 24, 2018.

The Zero Waste Commission was tasked with review of the proposed ordinance and the conduct of community meetings to gather feedback on the proposed ordinance, and make recommendations. Since that time, the Zero Waste Commission Foodware Subcommittee conducted 4 community meetings between June and September of 2018, and collected comments from over 60 restaurateurs, environmental advocates, members of the disability community, and other community members. Meetings were held on different days and times of the day, at locations throughout Berkeley, and were noticed to the restaurant and food service community with the help of the City’s Economic Development staff. The Commission analyzed comments received in writing and through public testimony, and on September 24, 2018 unanimously referred their findings to the City Council (Attachment 2).

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<sup>15</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

<sup>16</sup> Clean Water Action, *What’s in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

In addition, Councilmember Hahn met on-site with the owners of three restaurants that expressed concerns about implementation of the proposed ordinance, reviewing their current practices and challenges. All three have already implemented important measures to reduce the use of harmful Single Use Disposables, and shared important insights.

### ***Ordinance Elements***

The attached ordinance (Attachment 1) incorporates many of the Zero Waste Commission's recommendations and makes a number of changes to accommodate concerns and questions that were discussed as part of the Commission's public process. Changes include:

- Phasing-in elements of the ordinance, to allow Prepared Food Vendors time to adjust practices.
- Opportunities for limited exemptions, based on demonstrated hardship or extraordinary circumstances.
- Establishment of mini-grant and technical assistance programs, to help Prepared Food Vendors transition to Reusable and Compostable Foodware.
- Elimination of charges for all Single Use Disposable Foodware, except for cups, pending establishment of a Reusable Takeout Foodware program.
- Addition of standards for Prepared Food Vendors to reject customer-supplied cups that appear inappropriate or unsanitary.
- Addition of a recommendation that Prepared Food Vendors customarily offering straws keep a supply of compostable bioplastic straws for use by individuals specifically requesting "plastic" straws.
- Enforcement with notice and opportunities to cure, either by adopting practices or obtaining a waiver, if warranted, prior to imposition of any fines or other penalties.

### ***City Manager Referral Components***

To complement the roll out of the Single Use Disposable Foodware and Litter Reduction Ordinance, the Zero Waste Commission recommends a number of City-sponsored programs to support implementation of the Ordinance's requirements, including:

- A mini-grant program to help cover one-time costs associated with the transition to Reusable Foodware for on-site dining;
- Technical assistance to support implementation of ordinance requirements.

These are included in this referral.

It is incumbent upon the City to further expand composting resources – potentially including compost receptacles - for residents and customers. Many restaurants do

provide composting receptacles in-store currently, but many residential countertop kitchen pails are too small to accommodate a significant increase in compostable foodware, which is expected with widespread adoption of the Single Use Foodware and Litter Reduction Ordinance. Also, current trash receptacles in the public right of way do not accommodate compostables. The expansion of composting collection efforts also supports the goals and requirements of AB1826 and SB1383 to divert organics from the landfill, and is included in this referral. As a community, Berkeley will not reap the benefits of substituting compostables for plastic single use foodware unless the collection and composting of these items are actually achieved.

#### ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

#### CONTACT PERSON

Councilmember Sophie Hahn, District 5, (510) 981-7150  
Mayor Jesse Arreguín, (510) 981-7100

#### Attachments

1. Single Use Foodware and Litter Reduction Ordinance, amended to incorporate Zero Waste Commission recommendations
2. Zero Waste Commission recommendations to City Council, September 24, 2018
3. Referral to the Zero Waste Commission: Berkeley Single Use Foodware and Litter Reduction Ordinance, April 24, 2018



ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION

Sections:

- 11.64.010 Findings and Purpose
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all prepared food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Chapter supersedes existing laws and regulations

**11.64.010 Findings and Purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single-use food and beverage packaging furthers this goal.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks and alcoholic beverages.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include lids, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in Section 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

**11.64.040 Reusable Customer Cups**

- A. Except as provided in Chapter 11. Temporary Food Facilities of the California Health and Safety Code, Section 114353, customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) and as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup that conforms to the Disposable Foodware Standards in 11.64.070 for a beverage to be consumed off the premises, with any charge required pursuant to Section 11.64.050.D.

**11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards in Section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards in 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards in 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.

1. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor.
  2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
  3. Charges for Disposable Cups shall be identified separately on any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms and/or menu boards. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at Section 11.64.050, subsections A-C, a Prepared Food Vendor may request a waiver or waivers pursuant to Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
1. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards in Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
  2. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
  3. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
  4. Records of attempts to obtain a compliant item shall include:
    - a. Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
    - b. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.

- c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and
  - d. Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.
5. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

**11.64.060 Reusable Foodware for Dining on the Premises**

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in Section 11.64.070.
- B. Notwithstanding the requirements at Section 11.64.060.A, Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California State Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.

**11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.

- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of the next calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code and other Prepared Food Vendors that provide full bussing service and do not customarily provide waste receptacles for customer use, must provide at least one set of three easily accessed receptacles for discarded items to be composted, recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - 1. Blue for recyclables
  - 2. Green for compostables
  - 3. Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.

- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant. Notwithstanding the above, in certain limited, and unique circumstances existing prior to adoption of this ordinance, where the prepared food vendor demonstrates diligent efforts to comply but, due to insurmountable space and/or economic constraints, may never be reasonably able to comply, the City Manager may grant a waiver for a longer specified term. Any such longer term waiver shall expire automatically in the event of a significant remodel or alteration of the premises or if the Prepared Food Vendor ceases operations at the location for which the waiver has been granted.
  
- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.

**11.64.110 Duties responsibilities and authority of the City of Berkeley**

The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

**11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 Liability and Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however,



no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.

- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

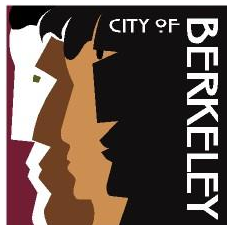
**11.64.140 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

**11.64.150 Chapter supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulations.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Sophie Hahn  
Councilmember District 5

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** December 11, 2018

**Item Number:** 27

**Item Description:** **Single Use Disposable Foodware and Litter Reduction Ordinance**

**Submitted by:** **Councilmember Sophie Hahn**

Incorporates further clarifying changes from the City Manager, Deputy City Manager, Public Works Department, the Ecology Center and other community partners.

Adds referral to the City Manager, requesting a report prior to January 2022 on implementation of the Single Use Disposable Foodware and Litter Reduction Ordinance and other referred programs.



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## ITEM 27

Supplemental 2

### ACTION CALENDAR

December 11, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember Sophie Hahn and Mayor Jesse Arreguín  
Subject: Single Use Disposable Foodware and Litter Reduction Ordinance

### RECOMMENDATION

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to:
  - a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”).
  - b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing Reusable Foodware requirements for eating on the premises.
  - c. Create a Reusable Takeout Foodware program for launch three years after the effective date of the Single Use Disposable Foodware and Litter Reduction Ordinance, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste.
  - d. Prior to launch of the Reusable Takeout Foodware program, draft for approval amendments to the Single Use Disposable Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers.
  - e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.
  - f. Prior to January 1, 2022 report to the City Council on progress towards full implementation of and compliance with the Single Use Disposable Foodware and Litter Reduction Ordinance and these referrals

3. Refer to the City Manager to determine funding and staffing needs and sources of funds to implement each program/phase. Consider and suggest implementation alternatives to achieve similar results at lower cost to the City, if any. Submit recommended alternatives to the Zero Waste Commission and City Council for consideration, and funding allocations or requests to the budget process.

### FINANCIAL IMPLICATIONS

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management. Even for "recyclable" items that are properly placed in a recycling bin, these items are costly to sort and process and have limited markets resulting in additional costs to the City. Many of these items result in contamination to the composting program which increase the cost of composting.

Staff time will be required to launch programs related to the Single Use Foodware and Litter Reduction Ordinance. Some programs and services may be provided by community partners at relatively low cost. Once launched, staff time for administration and enforcement of the Ordinance will be limited.

Costs, sources of funding and community partnerships to be determined by the City Manager.

### BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, "clamshells" and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. Because the environmental costs of these products is largely hidden to the business operator and consumer, little attention is paid to the quantity of packaging consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging. SUDs often become litter therefore minimizing their use will assist the City with achieving stormwater program requirements and could reduce costs for maintenance of full trash capture devices that the City has installed in stormdrains.

### ***Environmental Impacts of Single-Use Disposables***

The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California.<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter.<sup>2</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish.<sup>3</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year.

Most SUDs are used for just a few minutes before becoming waste, while most are made to last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>4</sup>

Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater<sup>5</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>6</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>7</sup>

### **Strategies to Regulate SUDs**

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have

<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> Ellen MacArthur Foundation (2016)

<sup>4</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

<sup>5</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646-1654.

<sup>6</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>7</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>8</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002, equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>9</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>10</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>11</sup>

There is growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>12</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>13</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>14</sup>

### ***Reducing SUDs in the City of Berkeley***

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation’s first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. The city reached a height of 78% waste diversion by AB 939 standards, and there has been a 50% reduction in solid waste disposal between 2000 to 2013<sup>15</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food

<sup>8</sup> “Successful Results from Bag Ordinance”, 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

<sup>9</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>10</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>11</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>12</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>13</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>14</sup> “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

<sup>15</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as “biodegradable” or “made from plants” which misleads consumers to believe it is compostable) contaminates compost, adding costs and reducing the quality of compost<sup>16</sup>. With China’s recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City’s collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of single-use food and beverage packaging.

Thanks to the leadership of Berkeley’s Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, the City Council unanimously referred a proposed Single Use Disposable Foodware and Litter Reduction ordinance to the Zero Waste Commission on April 24, 2018.

The Zero Waste Commission was tasked with review of the proposed ordinance and the conduct of community meetings to gather feedback on the proposed ordinance, and make recommendations. Since that time, the Zero Waste Commission Foodware Subcommittee conducted 4 community meetings between June and September of 2018, and collected comments from over 60 restaurateurs, environmental advocates, members of the disability community, and other community members. Meetings were held on different days and times of the day, at locations throughout Berkeley, and were noticed to the restaurant and food service community with the help of the City’s Economic Development staff. The Commission analyzed comments received in writing and through public testimony, and on September 24, 2018 unanimously referred their findings to the City Council (Attachment 2).

In addition, Councilmember Hahn met on-site with the owners of three restaurants that expressed concerns about implementation of the proposed ordinance, reviewing their current practices and challenges. All three have already implemented important measures to reduce the use of harmful Single Use Disposables, and shared important insights.

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<sup>16</sup> Clean Water Action, *What’s in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

### ***Ordinance Elements***

The attached ordinance (Attachment 1) incorporates many of the Zero Waste Commission's recommendations and makes a number of changes to accommodate concerns and questions that were discussed as part of the Commission's public process. Changes include:

- Phasing-in elements of the ordinance, to allow Prepared Food Vendors time to adjust practices.
- Opportunities for limited exemptions, based on demonstrated hardship or extraordinary circumstances.
- Establishment of mini-grant and technical assistance programs, to help Prepared Food Vendors transition to Reusable and Compostable Foodware.
- Elimination of charges for all Single Use Disposable Foodware, except for cups, pending establishment of a Reusable Takeout Foodware program.
- Addition of standards for Prepared Food Vendors to reject customer-supplied cups that appear inappropriate or unsanitary.
- Addition of a recommendation that Prepared Food Vendors customarily offering straws keep a supply of compostable bioplastic straws for use by individuals specifically requesting "plastic" straws.
- Enforcement with notice and opportunities to cure, either by adopting practices or obtaining a waiver, if warranted, prior to imposition of fines or other penalties.

### ***City Manager Referral Components***

To complement the roll out of the Single Use Disposable Foodware and Litter Reduction Ordinance, the Zero Waste Commission recommends a number of City-sponsored programs to support implementation of the Ordinance's requirements, including:

- A mini-grant program to help cover one-time costs associated with the transition to Reusable Foodware for on-site dining;
- Technical assistance to support implementation of ordinance requirements.

Both programs must be operative by June 2019, six months before the key elements of the ordinance take effect.

It is incumbent upon the City to further expand composting resources – potentially including compost receptacles - for residents and customers. Many restaurants do provide composting receptacles in-store currently, but many residential countertop kitchen pails are too small to accommodate a significant increase in compostable foodware which is expected with widespread adoption of the Single Use Foodware and



Litter Reduction Ordinance. The expansion of composting collection efforts also supports the goals and requirements of AB1826 and SB1383 to divert organics from the landfill. .

#### ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

#### CONTACT PERSON

Councilmember Sophie Hahn, District 5, (510) 981-7150  
Mayor Jesse Arreguín, (510) 981-7100

#### Attachments

1. Single Use Foodware and Litter Reduction Ordinance, amended to incorporate Zero Waste Commission recommendations
2. Zero Waste Commission recommendations to City Council, September 24, 2018
3. Referral to the Zero Waste Commission: Berkeley Single Use Foodware and Litter Reduction Ordinance, April 24, 2018

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION

Sections:

- 11.64.010 Findings and Purpose
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all prepared food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Chapter supersedes existing laws and regulations

**11.64.010 Findings and Purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single-use food and beverage packaging furthers this goal.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks and alcoholic beverages.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in Section 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

**11.64.040 Reusable Customer Cups**

- A. Except as provided in Chapter 11. Temporary Food Facilities of the California Health and Safety Code, Section 114353, customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) and as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to Section 11.64.050.D.

**11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards in Section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards in 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards in 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.

1. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor and used for the purposes set forth in Section 11.64.100.C.
  2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
  3. Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at Section 11.64.050, subsections A-C, a Prepared Food Vendor may request a waiver or waivers pursuant to Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
1. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards in Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
  2. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
  3. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
  4. Records of attempts to obtain a compliant item shall include:
    - a. Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
    - b. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.
    - c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and

- d. Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.
- 5. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

**11.64.060 Reusable Foodware for Dining on the Premises**

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in Section 11.64.070.
- B. Notwithstanding the requirements at Section 11.64.060.A, Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.

**11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.
- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.

- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of the next calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one set of three easily accessed receptacles for discarded items to be composted, recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - 1. Blue for recyclables
  - 2. Green for compostables
  - 3. Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.
- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts



to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to Section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
  - 1. Costs associated with complying with the requirements of this Chapter.
  - 2. Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
  - 3. Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.

**11.64.110 Duties responsibilities and authority of the City of Berkeley**The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

**11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 Liability and Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a

requirement of this chapter until one year after the effective date of such requirement.

- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.64.140 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

**11.64.150 Chapter supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulations.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



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ACTION CALENDAR

December 11, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember Sophie Hahn and Mayor Jesse Arreguín  
Subject: Single Use Disposable Foodware and Litter Reduction Ordinance

RECOMMENDATION

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to:
  - a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”), ~~to be launched by January 1, 2020 (six months before the date Reusable Foodware requirements become effective).~~
  - b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing Reusable Foodware requirements for eating on the premises. the Single Use Foodware Ordinance, on a free or sliding-scale fee basis, to be launched by July 1, 2019.
  - c. Create a Reusable Takeout Foodware program for launch three years after the effective date of the Single Use Disposable Foodware and Litter Reduction Ordinance July 1, 2021, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste.
  - d. Prior to launch of the Reusable Takeout Foodware program, Draft for approval amendments to the Single Use Disposable Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers.
  - e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.

e.f. Prior to January 1, 2022 report to the City Council on progress towards full implementation of and compliance with the Single Use Disposable Foodware and Litter Reduction Ordinance and these referrals

3. Refer to the City Manager to determine funding and staffing needs and sources of funds to implement ~~for~~ each program/phase. Consider and suggest implementation alternatives to achieve similar results at lower cost to the City, if any. and submit recommended alternatives to the Zero Waste Commission and City Council for consideration, and funding allocations or requests to the budget process. ~~funding allocations or requests to the budget process.~~

### FINANCIAL IMPLICATIONS

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management. Even for "recyclable" items that are properly placed in a recycling bin, these items are costly to sort and process and have limited markets resulting in additional costs to the City. Many of these items result in contamination to the composting program which increase the cost of composting.

Staff time will be required to launch programs related to the Single Use Foodware and Litter Reduction Ordinance. Some programs and services may be provided by community partners at relatively low cost. Once launched, staff time for administration and enforcement of the Ordinance will be limited.

Costs, sources of funding and community partnerships to be determined by the City Manager.

### BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, "clamshells" and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. Because the environmental costs of these products is largely hidden to the business operator and consumer, little attention is paid to the quantity of packaging consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging. SUDs often become litter therefore minimizing their use will

assist the City with achieving stormwater program requirements and could reduce costs for maintenance of full trash capture devices that the City has installed in stormdrains.

### ***Environmental Impacts of Single-Use Disposables***

The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California.<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter.<sup>2</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish.<sup>3</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year.

Most SUDs are used for just a few minutes before becoming waste, while most are made to last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>4</sup>

Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater<sup>5</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>6</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>7</sup>

<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> Ellen MacArthur Foundation (2016)

<sup>4</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

<sup>5</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646-1654.

<sup>6</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>7</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

### ***Strategies to Regulate SUDs***

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>8</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002, equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>9</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>10</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>11</sup>

There is growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>12</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>13</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>14</sup>

### ***Reducing SUDs in the City of Berkeley***

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation’s first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. The city reached a height of 78% waste diversion by AB 939 standards, and there has

<sup>8</sup> “Successful Results from Bag Ordinance”, 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

<sup>9</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>10</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>11</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>12</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>13</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>14</sup> “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

been a 50% reduction in solid waste disposal between 2000 to 2013<sup>15</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as “biodegradable” or “made from plants” which misleads consumers to believe it is compostable) contaminates compost, adding costs and reducing the quality of compost<sup>16</sup>. With China’s recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City’s collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of single-use food and beverage packaging.

Thanks to the leadership of Berkeley’s Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, the City Council unanimously referred a proposed Single Use Disposable Foodware and Litter Reduction ordinance to the Zero Waste Commission on April 24, 2018.

The Zero Waste Commission was tasked with review of the proposed ordinance and the conduct of community meetings to gather feedback on the proposed ordinance, and make recommendations. Since that time, the Zero Waste Commission Foodware Subcommittee conducted 4 community meetings between June and September of 2018, and collected comments from over 60 restaurateurs, environmental advocates, members of the disability community, and other community members. Meetings were held on different days and times of the day, at locations throughout Berkeley, and were noticed to the restaurant and food service community with the help of the City’s Economic Development staff. The Commission analyzed comments received in writing and through public testimony, and on September 24, 2018 unanimously referred their findings to the City Council (Attachment 2).

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<sup>15</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

<sup>16</sup> Clean Water Action, *What’s in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

In addition, Councilmember Hahn met on-site with the owners of three restaurants that expressed concerns about implementation of the proposed ordinance, reviewing their current practices and challenges. All three have already implemented important measures to reduce the use of harmful Single Use Disposables, and shared important insights.

### ***Ordinance Elements***

The attached ordinance (Attachment 1) incorporates many of the Zero Waste Commission's recommendations and makes a number of changes to accommodate concerns and questions that were discussed as part of the Commission's public process. Changes include:

- Phasing-in elements of the ordinance, to allow Prepared Food Vendors time to adjust practices.
- Opportunities for limited exemptions, based on demonstrated hardship or extraordinary circumstances.
- Establishment of mini-grant and technical assistance programs, to help Prepared Food Vendors transition to Reusable and Compostable Foodware.
- Elimination of charges for all Single Use Disposable Foodware, except for cups, pending establishment of a Reusable Takeout Foodware program.
- Addition of standards for Prepared Food Vendors to reject customer-supplied cups that appear inappropriate or unsanitary.
- Addition of a recommendation that Prepared Food Vendors customarily offering straws keep a supply of compostable bioplastic straws for use by individuals specifically requesting "plastic" straws.
- Enforcement with notice and opportunities to cure, either by adopting practices or obtaining a waiver, if warranted, prior to imposition of fines or other penalties.

### ***City Manager Referral Components***

To complement the roll out of the Single Use Disposable Foodware and Litter Reduction Ordinance, the Zero Waste Commission recommends a number of City-sponsored programs to support implementation of the Ordinance's requirements, including:

- A mini-grant program to help cover one-time costs associated with the transition to Reusable Foodware for on-site dining;
- Technical assistance to support implementation of ordinance requirements.

Both programs must be operative by June 2019, six months before the key elements of the ordinance take effect.



It is incumbent upon the City to further expand composting resources – potentially including compost receptacles - for residents and customers. Many restaurants do provide composting receptacles in-store currently, but many residential countertop kitchen pails are too small to accommodate a significant increase in compostable foodware which is expected with widespread adoption of the Single Use Foodware and Litter Reduction Ordinance. The expansion of composting collection efforts also supports the goals and requirements of AB1826 and SB1383 to divert organics from the landfill. .

#### ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

#### CONTACT PERSON

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

Mayor Jesse Arreguín, (510) 981-7100

#### Attachments

1. Single Use Foodware and Litter Reduction Ordinance, amended to incorporate Zero Waste Commission recommendations
2. Zero Waste Commission recommendations to City Council, September 24, 2018
3. Referral to the Zero Waste Commission: Berkeley Single Use Foodware and Litter Reduction Ordinance, April 24, 2018

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION ~~ORDINANCE~~

Sections:

- 11.64.010 Findings and Purposes
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all prepared food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Ordinance Chapter supersedes existing laws and regulations

**11.64.010 Findings and Purposes.**

The eCouncil of the City of Berkeley finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, ~~and~~ plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. ~~In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the City's waste stream.~~
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City, that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. ~~Reduction of single-use food and beverage packaging furthers this goal.~~
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, ~~as amended, in 2017,~~ and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, ~~or~~ raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, and alcoholic beverages ~~and other drinks~~.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in [sectionSection](#) 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

**11.64.040 Reusable Customer Cups**

- A. Except as provided in Chapter 11. Temporary Food Facilities of the California Health and Safety Code, Section 114353, Ccustomers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) and as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to [sectionSection](#) 11.64.050.D.

**11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards [at-in sectionSection](#) 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards [at-in](#) 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards [at-in](#) 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.

- a.1. \_\_\_\_\_ Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor and used for the purposes set forth in Section 11.64.100.C for use in its discretion.
  - b.2. \_\_\_\_\_ All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
  - c.3. \_\_\_\_\_ Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at sectionSections 11.64.050, subsections (A)-(C), a Prepared Food Vendor may request a waiver or waivers pursuant to sectionSection 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
- a.1. \_\_\_\_\_ No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards at in sSection 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
  - b.2. \_\_\_\_\_ The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
  - c.3. \_\_\_\_\_ The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
  - d.4. \_\_\_\_\_ Records of attempts to obtain a compliant item shall include:
    - i.a. \_\_\_\_\_ Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
    - ii.b. \_\_\_\_\_ Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.

~~iii-c.~~ \_\_\_\_\_ Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and

~~iv-d.~~ \_\_\_\_\_ Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

~~e-5.~~ \_\_\_\_\_ Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

#### **11.64.060 Reusable Foodware for Dining on the Premises (i.e. “Eating-in”)**

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in ~~section~~Section 11.64.070.
- B. Notwithstanding the requirements at ~~section~~Section 11.64.060\_(A), Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.

~~D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after January 1, 2019 shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060\_(A). Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060\_(A) shall be included as a specific condition of approval for such permits and licenses.~~

#### **11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.
- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of each-the next calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one set of three easily accessed receptacles s each for discarded items to be composted, -or recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - a-1.        Blue for recyclables
  - b-2.        Green for compostables
  - c-3.        Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.



- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.
- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to ~~section~~[Section](#) 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
  - ~~a.1.~~ [a.1.](#) Costs associated with complying with the requirements of this Chapter.
  - ~~b.2.~~ [b.2.](#) Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
  - ~~c.3.~~ [c.3.](#) Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.
  - ~~d.~~ [d.](#) ~~Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City-wide system of Reusable Foodware for Takeout Food.~~

**11.64.110 Duties responsibilities and authority of the City of BerkeleyCity Manager's Powers**

The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

~~A. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.~~

**11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards at-in Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 Liability and Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.64.140 Severability**

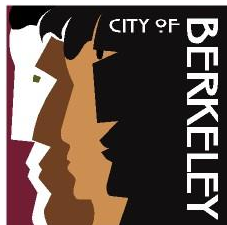
If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.~~If any part or provision of this chapter or the~~

~~application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable.~~

**11.64.150 Ordinance Chapter supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulation s.  
~~restricting the use of polystyrene foam.~~

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Sophie Hahn  
Councilmember District 5

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** December 11, 2018

**Item Number:** 27

**Item Description:** Single Use Disposable Foodware and Litter Reduction Ordinance

**Submitted by:** Councilmember Sophie Hahn

Formatting and continuity changes based on input from the City Attorney and City Clerk

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION

Sections:

- 11.64.010 Purposes
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all prepared food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Chapter supersedes existing laws and regulations

**11.64.010 Purposes.**

The council finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, and plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the City's waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City, that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single-use food and beverage packaging furthers this goal.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan as amended in 2017, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages and other drinks.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in Section 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

**11.64.040 Reusable Customer Cups**

- A. Customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) and as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to Section 11.64.050.D.

**11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards in Section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards in 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards in 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.
  - 1. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor for use in its discretion.



2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
  3. Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at Section 11.64.050, subsections A-C, a Prepared Food Vendor may request a waiver or waivers pursuant to Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
1. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards in Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
  2. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
  3. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
  4. Records of attempts to obtain a compliant item shall include:
    - a. Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
    - b. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.
    - c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and
    - d. Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

5. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

**11.64.060 Reusable Foodware for Dining on the Premises** Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in Section 11.64.070.
- B. Notwithstanding the requirements at Section 11.64.060.A, Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.
- D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after the effective date of this ordinance shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060.A. Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060.A shall be included as a specific condition of approval for such permits and licenses.

**11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.

- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of each calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one easily accessed receptacle each for discarded items to be composted or recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - 1. Blue for recyclables
  - 2. Green for compostables
  - 3. Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.

- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to Section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
  - 1. Costs associated with complying with the requirements of this Chapter.
  - 2. Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
  - 3. Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.
  - 4. Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City-wide system of Reusable Foodware for Takeout Food.

**11.64.110 Duties responsibilities and authority of the City of Berkeley**The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

- A. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.

**11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 11.64.070, nor shall any City-

sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 Liability and Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.64.140 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

**11.64.150 Chapter supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulations..

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION ~~ORDINANCE~~

Sections:

- 11.64.010 Purposes
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
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- 11.64.140 Severability
- 11.64.150 ~~Ordinance-Chapter~~ supersedes existing laws and regulations

**11.64.010 Purposes.**

The council finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, and plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the City's waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City, that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single-use food and beverage packaging furthers this goal.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan as amended in 2017, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 [and as amended](#)), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages and other drinks.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.



- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in ~~section~~Section 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

#### **11.64.040 Reusable Customer Cups**

- A. Customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) ~~and~~ as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to ~~section~~Section 11.64.050.D.

#### **11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards ~~at in~~ Section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards ~~at in~~ Section 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards ~~at in~~ Section 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.
  - ~~a.1.~~ a.1. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor for use in its discretion.

- ~~b.2.~~ b.2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
- ~~e.3.~~ e.3. Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at ~~section~~Sections 11.64.050, subsections ~~(A)-(C)~~, a Prepared Food Vendor may request a waiver or waivers pursuant to ~~section~~Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
- ~~a.1.~~ a.1. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards ~~at in s~~Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
- ~~b.2.~~ b.2. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
- ~~e.3.~~ e.3. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
- ~~d.4.~~ d.4. Records of attempts to obtain a compliant item shall include:
- ~~i.a.~~ i.a. Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
- ~~ii.b.~~ ii.b. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.
- ~~iii.c.~~ iii.c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and

~~iv.d.~~ Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

~~e.5.~~ Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

**11.64.060 Reusable Foodware for Dining on the Premises (i.e. "Eating-in")**

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in ~~section~~Section 11.64.070.
- B. Notwithstanding the requirements at ~~section~~Section 11.64.060 ~~(A)~~, Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.
- D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after the effective date of this ordinance ~~January 1, 2019~~ shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060 ~~(A)~~. Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060 ~~(A)~~ shall be included as a specific condition of approval for such permits and licenses.

**11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-

compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.

- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of each calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one easily accessed receptacle each for discarded items to be composted or recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - ~~a~~.1. \_\_\_\_\_ Blue for recyclables
  - ~~b~~.2. \_\_\_\_\_ Green for compostables
  - ~~c~~.3. \_\_\_\_\_ Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written

notification of the City Manager's decision to the address supplied by the applicant.

- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.
- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to ~~section~~Section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
  - ~~a.~~a.1.        Costs associated with complying with the requirements of this Chapter.
  - ~~b.~~b.2.        Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
  - ~~c.~~c.3.        Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.
  - ~~d.~~d.4.        Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City-wide system of Reusable Foodware for Takeout Food.

**11.64.110 Duties responsibilities and authority of the City of BerkeleyCity Manager's Powers**

The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any

and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

- A. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.

**11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards ~~at in~~ Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 Liability and Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.64.140 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional. If any part or provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable.

**11.64.150 ~~Ordinance Chapter~~ supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulation~~s~~.  
~~restricting the use of polystyrene foam.~~

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



ACTION CALENDAR

January 22, 2019

*(Continued from December 11, 2018)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Sophie Hahn and Mayor Jesse Arreguin  
Subject: Single Use Disposable Foodware and Litter Reduction Ordinance

RECOMMENDATION

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to:
  - a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”), to be launched by January 1, 2020 (six months before the date Reusable Foodware requirements become effective).
  - b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing the Single Use Foodware Ordinance, on a free or sliding-scale fee basis, to be launched by July 1, 2019.
  - c. Create a Reusable Takeout Foodware program for launch July 1, 2021, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste
  - d. Draft for approval amendments to the Single Use Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers.
  - e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.
3. Refer to the City Manager to determine funding and staffing needs and sources of funds for each program/phase, and submit funding allocations or requests to the budget process.



### FINANCIAL IMPLICATIONS

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management. Even for "recyclable" items that are properly placed in a recycling bin, these items are costly to sort and process and have limited markets resulting in additional costs to the City. Many of these items result in contamination to the composting program which increase the cost of composting.

Staff time will be required to launch programs related to the Single Use Foodware and Litter Reduction Ordinance. Some programs and services may be provided by community partners at relatively low cost. Once launched, staff time for administration and enforcement of the Ordinance will be limited.

Costs, sources of funding and community partnerships to be determined by the City Manager.

### BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, "clamshells" and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. Because the environmental costs of these products is largely hidden to the business operator and consumer, little attention is paid to the quantity of packaging consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging. SUDs often become litter therefore minimizing their use will assist the City with achieving stormwater program requirements and could reduce costs for maintenance of full trash capture devices that the City has installed in stormdrains.

#### ***Environmental Impacts of Single-Use Disposables***

The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California.<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter.<sup>2</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish.<sup>3</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year.

Most SUDs are used for just a few minutes before becoming waste, while most are made to last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>4</sup>

Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater<sup>5</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>6</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>7</sup>

### **Strategies to Regulate SUDs**

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>8</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for

<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> Ellen MacArthur Foundation (2016)

<sup>4</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

<sup>5</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646–1654.

<sup>6</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>7</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

<sup>8</sup> "Successful Results from Bag Ordinance", 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002, equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>9</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>10</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>11</sup>

There is growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>12</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>13</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>14</sup>

### ***Reducing SUDs in the City of Berkeley***

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation’s first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. The city reached a height of 78% waste diversion by AB 939 standards, and there has been a 50% reduction in solid waste disposal between 2000 to 2013<sup>15</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

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<sup>9</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>10</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>11</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>12</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>13</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>14</sup> “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

<sup>15</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as “biodegradable” or “made from plants” which misleads consumers to believe it is compostable) contaminates compost, adding costs and reducing the quality of compost<sup>16</sup>. With China’s recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City’s collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of single-use food and beverage packaging.

Thanks to the leadership of Berkeley’s Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, the City Council unanimously referred a proposed Single Use Disposable Foodware and Litter Reduction ordinance to the Zero Waste Commission on April 24, 2018.

The Zero Waste Commission was tasked with review of the proposed ordinance and the conduct of community meetings to gather feedback on the proposed ordinance, and make recommendations. Since that time, the Zero Waste Commission Foodware Subcommittee conducted 4 community meetings between June and September of 2018, and collected comments from over 60 restaurateurs, environmental advocates, members of the disability community, and other community members. Meetings were held on different days and times of the day, at locations throughout Berkeley, and were noticed to the restaurant and food service community with the help of the City’s Economic Development staff. The Commission analyzed comments received in writing and through public testimony, and on September 24, 2018 unanimously referred their findings to the City Council (Attachment 2).

In addition, Councilmember Hahn met on-site with the owners of three restaurants that expressed concerns about implementation of the proposed ordinance, reviewing their current practices and challenges. All three have already implemented important measures to reduce the use of harmful Single Use Disposables, and shared important insights.

### ***Ordinance Elements***

The attached ordinance (Attachment 1) incorporates many of the Zero Waste Commission’s recommendations and makes a number of changes to accommodate

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<sup>16</sup> Clean Water Action, *What’s in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

concerns and questions that were discussed as part of the Commission's public process. Changes include:

- Phasing-in elements of the ordinance, to allow Prepared Food Vendors time to adjust practices.
- Opportunities for limited exemptions, based on demonstrated hardship or extraordinary circumstances.
- Establishment of mini-grant and technical assistance programs, to help Prepared Food Vendors transition to Reusable and Compostable Foodware.
- Elimination of charges for all Single Use Disposable Foodware, except for cups, pending establishment of a Reusable Takeout Foodware program.
- Addition of standards for Prepared Food Vendors to reject customer-supplied cups that appear inappropriate or unsanitary.
- Addition of a recommendation that Prepared Food Vendors customarily offering straws keep a supply of compostable bioplastic straws for use by individuals specifically requesting "plastic" straws.
- Enforcement with notice and opportunities to cure, either by adopting practices or obtaining a waiver, if warranted, prior to imposition of fines or other penalties.

#### ***City Manager Referral Components***

To complement the roll out of the Single Use Disposable Foodware and Litter Reduction Ordinance, the Zero Waste Commission recommends a number of City-sponsored programs to support implementation of the Ordinance's requirements, including:

- A mini-grant program to help cover one-time costs associated with the transition to Reusable Foodware for on-site dining;
- Technical assistance to support implementation of ordinance requirements.

Both programs must be operative by June 2019, six months before the key elements of the ordinance take effect.

It is incumbent upon the City to further expand composting resources – potentially including compost receptacles - for residents and customers. Many restaurants do provide composting receptacles in-store currently, but many residential countertop kitchen pails are too small to accommodate a significant increase in compostable foodware which is expected with widespread adoption of the Single Use Foodware and Litter Reduction Ordinance. The expansion of composting collection efforts also supports the goals and requirements of AB1826 and SB1383 to divert organics from the landfill. .

ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

CONTACT PERSON

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

Mayor Jesse Arreguín, (510) 981-7100

Attachments

1. Single Use Foodware and Litter Reduction Ordinance, amended to incorporate Zero Waste Commission recommendations
2. Zero Waste Commission recommendations to City Council, September 24, 2018
3. Referral to the Zero Waste Commission: Berkeley Single Use Foodware and Litter Reduction Ordinance, April 24, 2018

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

Sections:

- 11.64.010 Purposes
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Ordinance supersedes existing laws and regulations

**11.64.010 Purposes.**

The council finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, and plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the City's waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City, that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single-use food and beverage packaging furthers this goal.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan as amended in 2017, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.



- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages and other drinks.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in section 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

**11.64.040 Reusable Customer Cups**

- A. Customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e). Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to section 11.64.050.D.

**11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards at section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards at 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards at 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.
  - a. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor.

- b. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
  - c. Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at sections 11.64.050(A)-(C), a Prepared Food Vendor may request a waiver or waivers pursuant to section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
- a. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards at section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
  - b. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
  - c. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
  - d. Records of attempts to obtain a compliant item shall include:
    - i. Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
    - ii. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.
    - iii. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and
    - iv. Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

- e. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

**11.64.060 Reusable Foodware for Dining on the Premises (i.e. “Eating-in”)**

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in section 11.64.070.
- B. Notwithstanding the requirements at section 11.64.060(A), Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in 11.64.070.
- D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after January 1, 2019 shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060(A). Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060(A) shall be included as a specific condition of approval for such permits and licenses.

**11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.

- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of each calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one easily accessed receptacle each for discarded items to be composted or recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - a. Blue for recyclables
  - b. Green for compostables
  - c. Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.

- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
  - a. Costs associated with complying with the requirements of this Chapter.
  - b. Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
  - c. Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.
  - d. Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City-wide system of Reusable Foodware for Takeout Food.

**11.64.110 City Manager's Powers**

- A. The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.
- B. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.

**11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards at Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.64.140 Severability**

If any part or provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable.

**11.64.150 Ordinance supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulation restricting the use of polystyrene foam.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## Zero Waste Commission Recommendations for the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance

*Note that comments may not be verbatim, and that “recyclable” materials refer ONLY to those accepted in the City’s Curbside Recycling Collection Program.*

### TOPIC: Requiring Durable/Reusable Foodware for DINING-IN

Comments received:

- Space concerns for installing washing machines/water usage/reusable ware
- Durable foodware poses a safety threat to employees if used as projectiles (comment from Top Dog)
- Labor costs to train and require employees to wash durable food ware

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Provide free technical assistance to help food establishments plan operations and equipment changes
- Provide small grants or loans to help defray the up-front costs of purchasing reusable foodware and re-configuring kitchens
- Allow private off-site washing/cleaning services to provide service in lieu of on-site cleaning.
- Exempt certain establishments from the 100% reusable requirement on a case-by-case basis, if they can prove it was impossible to implement all requirements due to unique considerations, so long as a good faith effort is made to do the most possible to achieve goals of ordinance.
- Compostable items used in any case where use of reusables are determined non-implementable by City.
- City-wide funded education program for businesses to transition to requirements of ordinance.
- Provide fact-sheet/FAQ for businesses

### TOPIC: Collection and Documentation of SUD Charge-Added complexity/logistics

Comments Received:

- Multiple business owners expressed concern about how to implement the SUD charge.
- Need clarification on how to enter line item(s) for SUD charges? (Ex: Does a customer who orders a soup, salad, and sandwich need three SUD line items, each item to be documented?)
- Limited/low quality of labor and high cost of business makes this a real issue
- Many people do not request a receipt - is this non-compliant with ordinance requiring public notification of charge?



Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Clarify requirements for reporting line-item charges on receipts (virtual or hardcopy)
- Provide fact-sheet/FAQ for businesses

**TOPIC: Ordinance targets prepared/served food produced in-house for take-out, while exempting other waste generating food-serving establishments (ex: pre-packaged take-out food from grocery stores, coffee chains, movie theaters).**

Comments:

- Food that is trucked in (examples: Trader Joe's salads, to-go prepared food at grocery stores, coffee chains) can be packed in any container with no fee, thus targeting small, local businesses.
- Similarly, will a fountain drink in a SUD is subject to a charge, but not a can of soda.
- Movie theaters do not have kitchens, cannot be expected to convert to reusables, request exemption from SUD charges.

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Phased approach to charge for take-out food ware, to ensure equity across businesses in Berkeley
- Examine ways to require compostable containers for prepared foods from other establishments besides those that produce food on-site for take-out (ex: grocery stores, coffee store chains)
- Include movie theaters for conversion to compostables if reusables are not possible.

**TOPIC: Availability of alternative compostable containers to contain all foods for take-out.**

Comments:

- No compostable containers exist that can hold items at 180F degrees
- No acceptable alternatives to plastic are currently available for all types of food condiments

Suggestion:

- Exempt items with no reasonable alternatives until acceptable/compliant items are available in the market Alternatives should be compostable or recyclable.
- City should work with recognized industry organizations for accepted standards of "best" items that comply with compostability and health concerns (ex: BPI) in order to develop approved list of compliant items

**TOPIC: Ordinance does not ensure compostable/recyclable SUD items will end up in proper source-separated stream.**

Comments:

- If SUDs are required to be compostable or recyclable, it is still likely these items will end up in landfill, based on consumer behavior and availability of recycle/compost collection containers. Suggest a focus on downstream user, as it is a known issue that waste streams are often poorly sorted.
- Overseas markets are no longer accepting our plastics, and they are harming the environment with litter and chemicals/degradation

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Funded City-wide program to educate consumers on proper sorting of waste and ordinance (FAQ)
- Improve collection through increased service and quantity of city bins in high-traffic food take-out establishments
- All items should be required to be compostable (no recyclable plastics), due to changing overseas markets
- Require customer-facing in-store compost bins for collection

**TOPIC: Charges for take-out containers when consumers have no alternative to BYO (affects consumer)**

Comments:

- Many restaurants are prohibited from in-house dining, and thus can only offer take out options.
- Results in customer complaints for being charged for take-out containers with no alternatives available.
- As customers have no choice, charge will not lead to a positive behavior change (*this issue is in contrast to the bag fee, where customers always have the choice to bring their own bags*).
- Take-out is an essential life factor for many customers.
- Punishing people for using such is regressive.
- Many businesses will not allow BYO take-out container to fill for sanitary concerns or health violations.
- With minimum wage increase, this ordinance would add just another increase in prices and be hard for consumers to swallow.
- Reusable cups brought in by customers have been relatively acceptable and exhibits positive behavior change
- Affects low-income stakeholders that may have no access to washing their BYO containers
- Incentives for discount for BYO instead of charges

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Create a guidance document and feasibility study on “Bring Your Own...”
- Develop a pilot program for standardized reusable to-go container system.
- Implement phased-approach to charge: phase one for hot beverage containers/lids, phase two later for food containers after analyzing results of phase one implementation and pilot program
- Assess impacts of any charge on low-income, transient stakeholders
- Consider incentives for BYO as part of overall ordinance strategy
- Clarify in the ordinance language that there is no requirement for businesses to charge additional fees for disposables; the SUD fee must simply be itemized. (i.e. if a business currently charges \$10 for a meal, they can still charge \$10, but they need to itemize on the receipt the \$9.75 for meal + \$.0.25 for the disposable container.)

**TOPIC: BYO containers need to be acceptable to businesses for portion sizing and cleanliness/compliance with health codes. (affects Businesses)**

Comments:

- Many restaurants are prohibited from in-house dining, and thus can only offer take out options.
- Results in customer complaints for being charged for take-out containers with no alternatives available.
- As customers have no choice, charge will not lead to a positive behavior change
- Will potentially drive customers to neighboring cities lacking such an ordinance (*in contrast to bag fee, where BYOB is available*).
- Cleanliness of BYO brought in by customers is an issue
- Consider incentives for BYO as part of overall ordinance strategy

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Work with local health code departments for clarity on acceptable containers
- Work with businesses to support conditions of BYO containers provided by customers (beverage containers)
- Establish City-wide reusable container program (funding likely necessary)
- Consider pilot-program for reusable container program
- Implement phased-approach to charge: phase one for hot beverage containers/lids, phase two later for food containers after analyzing results of phase one implementation and pilot program

**TOPIC: Acceptable straws that meet ordinance requirements yet effectively serve disabled stakeholders.**

Comments:

- Disabled community has been left out of conversation
- Disabled stakeholders need straws that will not degrade or pose a choking hazard
- Other stakeholders that are not disabled may need straws (children, older people)

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Assess and study best alternatives available that are deemed acceptable for the disabled community.
- Bio-Plastic certified compostable straws could be exempted for said special uses/stakeholders, with recommendation that businesses have them available and provided upon request.
- For general use, specify compostable paper straws only, on request or self-service
- Possible: City purchase of reusable silicone straws to be distributed by City through disabled groups, commission, and other sanctioned methods (City of Alameda).

**Topic: Coordinate with existing laws/ordinances and seek support from the Alameda County Waste Management Authority (StopWaste).**

Comments:

- Replace “Disposable Food Packaging” with “Disposable Foodware” (StopWaste)
- Waivers: What would a partial waiver include? What happens after 3 years? What constitutes “make every effort to become compliant”? What type of activities/efforts would the city consider? What types of thresholds would be considered allowable under “space constraints?” (StopWaste)
- Clarify language of ordinance, including waivers, time frame, space constraints, free of added Fluorinated Chemicals
- If “to go” meal is served in a compliant reusable bag, an additional minimum \$0.10 will need to be charged to comply with Ordinance 2016-2, which could increase total “Takeout Meal” charges to be greater than \$0.25. There is no charge for carryout food given to customers in compliant paper bags. (StopWaste)

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Coordinate with ACWMA (StopWaste) to ensure language is consistent with existing ordinances
- Examine best practices of local communities in County and cities bordering City.
- Review Bag Ban ordinance for compliance and consideration of charge amount.

**The Commission recommends taking note of the following issues that should to be addressed:**

- Recyclability of most “plastic” foodware
- Difficulty to tell the difference between compostable bio-plastic utensils and plastic utensils
- Importance of City-approved list for acceptable materials for take-out containers
- Which food waste-generating establishments are exempted (ex. theaters)
- No plastic ware should be accepted, in spite of language in current City Curbside Recycling Collection Program accepted materials, due to market instability and environmental concerns.
- Amount of proposed charge (\$0.20 v. \$0.25) to balance customer behavior change with businesses concerns of loss of sales due to minimum wage hike and proposed charge.



Berkeley City Council  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704

ACTION CALENDAR

April 24, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmember Sophie Hahn and Mayor Jesse Arreguin, and  
Councilmembers Linda Maio and Susan Wengraf

Subject: Referral to the Zero Waste Commission:  
Berkeley Single Use Foodware and Litter Reduction Ordinance

RECOMMENDATION

1. Refer the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance to the Zero Waste Commission to invite input from key stakeholders, including restaurants and other food retailers and zero waste, plastics, oceans and other environmental experts, and hold public meetings to obtain input on the proposed Ordinance.
2. Refer to the Zero Waste Commission to report back to the City Council results of the Commission's community outreach and analysis, and provide recommendations for improvements to the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

FINANCIAL IMPLICATIONS

The only added cost of the referral, beyond normal staff time to support the Zero Waste Commission's review of the proposed ordinance, is potential staffing of one or more community meetings to obtain stakeholder and other public input.

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management.

BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plastic bottles, caps, lids, straws, cups, and containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. The practice of providing food and beverage packaging free of charge fails to incorporate the environmental and social costs of these products into the price of food and beverage service. As a result, customers and food business operators pay little attention to the quantity of single use packaging products consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many

environmental impacts and costs associated with the use and disposal of single-use foodware and packaging.

### ***Environmental Impacts of Single-Use Disposables***

The production, consumption, and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter, half of which comes from fast food and take-out food establishments<sup>2</sup>
- Eighty percent of marine plastic pollution originates from trash in urban runoff<sup>3</sup>
- In the year 2000, half of all plastic packaging in the UK was comprised of SUDs<sup>4</sup>
- Nearly 700 species of marine wildlife are impacted by ingestion and entanglement of plastics, causing starvation, disease, and death<sup>5</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish<sup>6</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year
- Paper cups alone generate 2.2 billion pounds of waste per year nationwide, consuming over 11 million trees, resulting in 4 billion pounds of carbon dioxide emissions, and requiring the consumption of 35 billion gallons of water to manufacture<sup>7</sup>

Most SUDs are used for just a few minutes before becoming waste, while the plastics many are made of last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>8</sup> Among other hazards, plastic debris attracts and concentrates ambient pollutants

<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> 80% from land based sources: U.S. Department of Commerce, NOAA, Office of Public and Constituent Affairs, (1999) "Turning to the Sea: America's Ocean Future," p.5. Re: most of land-based ocean litter comes from trash in urban runoff: *Trash TMDLs for the Los Angeles River Watershed*, (September 19, 2001):17.

<sup>4</sup> Hopewell, et Al. Royal Society Biological [Sciences Philos Trans R Soc Lond B Biol Sci](#). 2009 Jul 27; 364(1526): 2115–2126.

<sup>5</sup> Gall & Thompson, The Impact of Marine Debris on Marine Life, *Marine Poll Bull*, 2015 Mar 15:93(1-2);170-179

<sup>6</sup> Ellen MacArthur Foundation (2016)

<sup>7</sup> Clean Water Action Disposable vs. Reusable Cups Fact Sheet

<sup>8</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

in seawater and freshwater<sup>9</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>10</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>11</sup>

### ***Berkeley as a Zero Waste Leader***

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation's first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. 75% of the City's discarded material is diverted from landfill, and there has been a 50% reduction in solid waste disposal between 2000 to 2013<sup>12</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as "compostable") contaminates compost, adding costs and reducing the quality of compost<sup>13</sup>. With China's recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City's collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of unnecessary single-use food and beverage packaging.

### ***Strategies to Regulate SUDs***

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>14</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a "Plas-Tax" in 2002 equivalent to

<sup>9</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646–1654.

<sup>10</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>11</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

<sup>12</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

<sup>13</sup> Clean Water Action, *What's in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

<sup>14</sup> "Successful Results from Bag Ordinance", 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>



about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>15</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>16</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>17</sup>

There appears to be growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>18</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>19</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>20</sup>

### ***Economic Advantages for Businesses***

Businesses in the Bay Area spend between \$0.25 and \$0.85 per meal on disposable foodware.<sup>21</sup> Reducing the use of SUDs can provide significant cost savings, even considering the costs associated with making the transition to reusables. The *Rethink Disposable* program of the Clean Water Fund, in partnership with STOP WASTE in Alameda County, has conducted a number of case studies showcasing businesses that have voluntarily minimized SUDs and incorporated reusables<sup>22</sup>. These businesses saw annual net cost savings (after accounting for costs of reusables, dishwashing, etc.) from \$1,000 - \$22,000 per year.<sup>23</sup>

In addition, recent surveys completed by the City of Berkeley's Office of Economic Development found that neighborhood cleanliness, including trash collection, was a major concern of business owners interviewed. Business Improvement Districts (BIDs) and the Clean Cities Program work to keep Berkeley's business districts clean, but at great expense. The Telegraph Business Improvement District (TBID), for example, reported collecting over 22 tons of street litter in one year.

### ***Reducing SUDs in the City of Berkeley***

<sup>15</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>16</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>17</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>18</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>19</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>20</sup> "Taiwan to ban disposable plastic items by 2030," February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

<sup>21</sup> Id.

<sup>22</sup> <https://cleanwater.org/publications/participating-business-testimonials>

<sup>23</sup> Data provided by Clean Water Action's *ReThink Disposable* program, March 2018. See attached fact sheet.

Through the leadership of Berkeley's Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, a proposed Berkeley Single Use Foodware and Litter Reduction Ordinance has been drafted. This visionary Ordinance combines proven strategies for reducing SUDs including promotion of reusable foodware, fees when SUDs are used, and creation of a list of approved, truly compostable or recyclable SUDs for use City-wide.

The Ecology Center and Clean Water Action also undertook an extensive research and public outreach process, including surveys of local food businesses, discussions with business owners and environmental experts, and assessment of a charge-based cup reduction pilot project completed by Telegraph Green and Cafe Strada<sup>24</sup>. This level of research, outreach and field testing represents study and consultation of an intensity and duration rarely undertaken in conjunction with new proposals in Berkeley, and has resulted in a proposed ordinance incorporating extensive expert, community and real-world data.

The survey, conducted in 2017-2018 by Clean Water Action, the Ecology Center, and other partners, covers 59 Berkeley food businesses (about 10% of affected food businesses) of various sizes and service styles, and includes respondents from all of the City's commercial districts. Of these businesses, 58% would support a customer charge for cups, and 67% would support a charge for disposable food containers.

These and other findings inform the proposed ordinance, which was written to be both aspirational and achievable. More complex proposals and bans were rejected in favor of a simplified set of recommendations that offer cost savings for restaurants and small businesses, a stream of revenue for the City to implement and enforce the ordinance, and a major step forward in reducing pollution and litter, and in meeting the City's Zero Waste and Climate Action Goals.

### ***Proposed Ordinance Elements***

The purpose of the proposed Ordinance is to reduce litter and waste associated with single use food and beverage packaging in the City of Berkeley. The proposal requires that food consumed on-site be served in reusable, durable dishes, cups, and utensils. Foil, wrappers, and tray liners are still allowed, and provision is made for waivers under specific circumstances.

The ordinance also provides that food businesses charge customers for take-out cups, clamshells and other take-out foodware, similar to the charge for paper bags associated with California's plastic bag ban (SB 270). Charges for disposables will encourage customers to bring their own reusable cups and containers. \$0.25 will be charged for disposable cups, and \$0.25 for food containers. Food establishments will keep the proceeds from these charges, and the City will collect an "at cost" fee for administration of the program. As with charges for bags, customers using SNAP & WIC will be excluded from paying these fees. The ordinance also

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<sup>24</sup> <https://serc.berkeley.edu/paying-the-price-of-disposable-cups-at-caffe-strada/>

provides that single use straws, utensils, and stirrers (which will have to be compostable) be provided only “by request”.

Finally, the policy will require that all disposable foodware be free of certain highly toxic chemicals known to migrate into food and beverages, and be recyclable or compostable in the City’s waste management programs.

The City will be responsible for creating and updating an accessible list of approved foodware so that food retailers can easily identify products that conform to requirements. This will protect public health and the environment from some of the most toxic and persistent chemicals used in food and beverage packaging, and ensure that “compostables” furnished in Berkeley are actually compostable within the City’s program. The City will be responsible for administration and enforcement.

#### ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley’s Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

#### CONTACT

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Mayor Jesse Arreguin | (510) 981-7100 | [mayor@cityofberkeley.info](mailto:mayor@cityofberkeley.info)

#### ATTACHMENTS

1. Draft Berkeley Single Use Foodware and Litter Reduction Ordinance
2. CaseStudy: Caravaggio Gelateria Italiana
3. Clean Water Action Disposable vs Reusable Cups Fact Sheet



- H. **“Reusable Foodware”** shall mean all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- I. **“Plastic”** means a synthetic material made from fossil fuel based polymers such as polyethylene, polystyrene, polypropylene, and polycarbonate that can be molded or blown into shape while soft and then set into a rigid or slightly elastic form.
- J. **“Fluorinated Chemicals”** means perfluoroalkyl and polyfluoroalkyl substances or fluorinated chemicals, which for the purposes of food packaging are a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

**Section 2. Reusable Foodware for Dining on the Premises (i.e. “Eating-in”)**

This section applies to Prepared Food served for consumption on the premises of a Prepared Food Vendor.

- A. As of [Effective Date], Prepared Food Vendors shall only sell or provide food and beverages for consumption on the premises using Reusable Foodware, except as provided in Section 2(C).
- B. Prepared Food Vendors offering Takeout Food shall ask customers whether they will consume their purchased food or beverage on the premises (i.e. “for here”) or off the premises (i.e. “to go”). If the purchased food or beverage is intended for consumption on the premises, the Prepared Food Vendor shall serve such food or beverage in Reusable Foodware.
- C. Prepared Food Vendors that do not have on-site or off-site dishwashing capacity to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a full or partial waiver from the requirements of Section 2(A) if they can demonstrate inability to comply due to space constraints and financial hardship, such as investments and costs that take more than a year to be paid for through savings. Waivers may be granted for up to three years, during which time the Prepared Food Vendor shall make every effort to become complaint. If a waiver is granted, all Disposable Foodware used for eating on the premises must conform to the Disposable Food Packaging Standards in Section 3.
- D. As of [Date - 1 year after Effective Date?], new zoning permits and business licenses for Prepared Food Vendors shall only be granted to Prepared Food Vendors that have adequate onsite or offsite dishwashing capacity to comply with section 2(A).

- E. Disposable food wrappers, foil sheets, napkins and paper or foil basket and tray liners shall be allowed for dining on the premises so long as they meet the Disposable Food Packaging Standards in Section 3.

### **Section 3. Disposable Foodware Standards**

This section provides standards for the types of Disposable Foodware that may be used for Takeout Food, or for Prepared Food eaten on the premises of a Prepared Food Vendor with a valid waiver, as provided for in Section 2(C).

- A. The City shall maintain a list of approved Disposable Foodware sources and types that shall be available at [physical location] and on the City's website. The City shall update annually the list of approved Disposable Foodware types and sources. No other Disposable Foodware may be used by any Prepared Food Vendor.
- B. Disposable Foodware approved by the City shall meet the following standards:
  - a. Beginning [Date], all Disposable Foodware used to serve or package Prepared Foods that are prepared in the City of Berkeley:
    - i. Must be accepted by City of Berkeley composting or recycling municipal collection programs, and
    - ii. If compostable, must be certified compostable by the Biodegradable Product Institute or another independent third party certifying organization or agency recognized by the City.
  - b. Beginning [Date - one year from Effective Date], compostable Disposable Foodware containing paper or other natural fiber material shall be free of all intentionally added Fluorinated Chemicals as certified by the Biodegradable Product Institute or other third party certifying organization or agency recognized by the City.
  - c. The City may adopt regulations that require Disposable Foodware to have minimum post-consumer recycled content, and any other Disposable Foodware specifications that support the goals of this Ordinance.

### **Section 4. Disposable Foodware Charges**

Customers shall be charged for Disposable Foodware used for dining off the premises.

- A. Beginning [Effective Date] , Prepared Food Vendors selling Takeout Food shall charge a customer twenty five cents (\$0.25) for every Disposable Cup provided.
- B. Beginning [Effective Date], Prepared Food Vendors selling Takeout Food shall charge a customer twenty five cents (\$0.25) per Disposable Food Container and no more than twenty-five-cents (\$0.25) per Takeout Meal.
- C. Income from charges for Disposable Cups and Disposable Food Containers shall be retained by the Prepared Food Vendor.
- D. The charges set forth in A and B apply to all Takeout Food and Takeout Meals prepared and sold in the City of Berkeley and served in Disposable Food Containers and Disposable Cups, except for Prepared Food Vendors providing Disposable Food

Containers and Disposable Cups for carry-out of leftovers from Prepared Food eaten on the premises (i.e. “doggie bags”).

- E. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code, or an electronic benefit transfer card issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the charges specified in this Section.
- F. Charges for Disposable Cups, Disposable Food Containers and Takeout Meals shall be identified separately on any receipt provided to the customer.
- G. Disposable straws, stirrers, cup spill plugs, napkins, condiment packets, utensils and other similar Disposable Foodware accompanying Disposable Cups, Disposable Food Containers and Takeout Meals shall be provided free of charge, and only upon request by the customer or at self-serve stations.

#### **Section 5. Signage Requirements for Takeout Food Vendors**

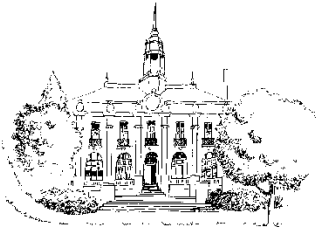
- A. The City shall provide text explaining Disposable Foodware Charges and specifications for signage that Takeout Food Vendors must post in plain view of customers at the point of sale.
- B. Takeout Food Vendors shall also include Disposable Foodware Charges on their printed and electronically available menus.
- C. Takeout Food Vendors shall inform customers of Disposable Foodware Charges for orders taken by telephone.
- D. Third-party delivery services shall include on their electronic platforms text pursuant to subsection A explaining Disposable Foodware Charges and include Disposable Foodware Charges on their menus and billing interfaces.

#### **Section 6. Duties, Responsibilities and Authority of the City of Berkeley**

- A. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter.
- B. The Master Fee Schedule shall be amended to include a fee to cover City expenses of inspection and enforcement of this ordinance.
- C. It shall be the duty of the City Manager to collect and receive all fees imposed by this Section, and to keep an accurate record thereof.
- D. Within three years of the effective date of this Ordinance, the City shall evaluate and report to City Council on the effectiveness of this ordinance.







## Kriss Worthington

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 EMAIL [kworthington@cityofberkeley.info](mailto:kworthington@cityofberkeley.info)

### CONSENT CALENDAR

November 27th, 2018

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Kriss Worthington  
 Subject: Refer to the City Manager to consider boycotting Amazon for its role in tracking immigrants in cooperation with ICE and abusive working conditions **and its labor practices toward its employees.**

### RECOMMENDATION

Refer to the City Manager to consider the City of Berkeley boycotting Amazon and refrain from using its services to purchase goods for city use.

### BACKGROUND

This referral is requested to be considered along to be with the Sanctuary Contracting Ordinance and the Resolution declaring City of Berkeley will not contract with or invest City funds in any entity involved in the production or upgrading of weapons.

A recent report released by several Latin and immigration nonprofits including Mijente, The National Immigration Project, Immigrant Defense Project, and Empower LLC has implicated the tech giant Amazon in playing a central role in the Trump administration's effort to track and detain immigrants. Amazon has done this by providing federal agencies such as ICE and DHS use of its cloud storage to host data collected by Palantir, another company named in the report which designed the Investigative Case Management system crucial to ICE's operations by using a vast ecosystem that combines public and private data making it easier to track immigrants and deport them. Little information is known about the inner workings of this software or how ICE uses it but after its implementation arrests increased 42% compared to the previous year. While it is not the only company to store and manage data for ICE's use according to the report Amazon has the most federal authorizations for government data out of them all.

By profiting off the Trump Administration's campaign against immigrants by allowing ICE to use its services, Amazon is picking a side whether it wants to admit it or not. While Page 1 of 2 Palantir is exclusively a software business, Amazon still relies on much of its profits being generated by sales of physical merchandise and originally made a name for itself as the convenient one stop market place for everything.

Moreover, Amazon has come under fire recently for its labor practices which involve using surveillance technology to monitor its warehouse employees and punishes them if they do not meet their targets in time. On top of this, Amazon has tried to prevent its workers from unionizing. Recently, Elizabeth Warren and Bernie Sanders have sent a letter to CEO Jeff Bezos asking him to look into allegations of his company deliberately distributing anti-union materials.

Therefore, the City of Berkeley should consider that it will boycott Amazon and not use its services to purchase goods either for city use or for official events and commit to finding ethical alternatives. Setting this example will hopefully encourage other cities to follow suit sending a message to Amazon to prioritize human lives over money.

FINANCIAL IMPLICATIONS:

Minimal

ENVIRONMENTAL SUSTAINABILITY:

No negative impact and consistent with city standards.

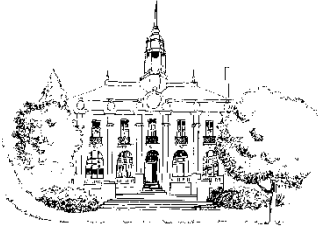
MORE INFORMATION

1. <https://mijente.net/2018/10/23/whos-behind-ice-the-tech-companies-fueling-deportations/>
2. <http://www.nydailynews.com/news/national/ny-news-amazon-tech-companies-transforming-immigration-enforcement-20181023-story.html?fbclid=IwAR3Pk9XQWZviN-5gNm-bYIpaVZrX5J9zvoLjsoV7KYaB8AGOg6YF2z52Hck>
3. <https://www.technologyreview.com/s/612335/amazon-is-the-invisible-backbone-behind-ices-immigration-crackdown/>
4. [https://www.washingtonpost.com/business/2018/10/17/bernie-sanders-elizabeth-warren-target-amazon-over-labor-practices/?noredirect=on&utm\\_term=.546918a7150f](https://www.washingtonpost.com/business/2018/10/17/bernie-sanders-elizabeth-warren-target-amazon-over-labor-practices/?noredirect=on&utm_term=.546918a7150f)
5. <https://www.pastemagazine.com/articles/2017/12/7-examples-how-amazon-treats-their-90000-warehouse.html>
6. <https://www.theguardian.com/commentisfree/2018/jul/08/amazon-jeff-bezos-unionize-working-conditions>

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## Kriss Worthington

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### ACTION CALENDAR

January 22, 2019

*(Continued from November 27, 2018)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington and Councilmember Cheryl Davila  
Subject: Refer to the City Manager to consider boycotting Amazon for its role in tracking immigrants in cooperation with ICE

### RECOMMENDATION

Refer to the City Manager to consider the City of Berkeley boycotting Amazon and refrain from using its services to purchase goods for city use.

### BACKGROUND

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FINANCIAL IMPLICATIONS:

Minimal

ENVIRONMENTAL SUSTAINABILITY:

No negative impact and consistent with city standards.

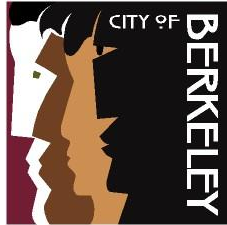
MORE INFORMATION

1. <https://mijente.net/2018/10/23/whos-behind-ice-the-tech-companies-fueling-deportations/>
2. <http://www.nydailynews.com/news/national/ny-news-amazon-tech-companies-transforming-immigration-enforcement-20181023-story.html?fbclid=IwAR3Pk9XQWZviN-5gNm-bYIpaVZrX5J9zvLjsoV7KYaB8AGOG6YF2z52Hck>
3. <https://www.technologyreview.com/s/612335/amazon-is-the-invisible-backbone-behind-ices-immigration-crackdown/>

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Office of the Mayor

## SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** December 11, 2018

**Item Number:** Fa

**Item Description:** Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Projects

**Submitted by:** Mayor Jesse Arreguín

On September 15, 2015, the City Council referred Item 39 “Mandatory Green Stormwater Infrastructure in New Developments” to the City Manager, Planning Commission and Community Environmental Advisory Committee (see attachment). The proposal was modeled after ordinances adopted in San Francisco and Seattle requiring the instillation of stormwater infrastructure in larger projects.

The CEAC has brought its recommendations back to the City Council in response to this referral. Many of the recommendations proposed by CEAC are worth further study, however a key question is what projects should they apply to? My original referral only recommended that these requirements apply to projects of 100 units or more, or commercial developments that result in 5,000 square feet of new or replaced impervious surface.

I am proposing a modification to the CEAC recommendation as follows:

**Refer to the City Manager and Planning Commission to develop measures to incorporate Green Stormwater Infrastructure and water conservation features in new projects. The regulations should apply to large residential developments of 50 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface. The City Manager and Planning Commission should consider the legislation adopted in San Francisco and Seattle and the following recommendations from the CEAC:**

- **Comply beyond the State and Alameda County current requirements;**

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- **Encourage the treating and detaining of runoff up to approximately the 85th percentile of water deposited in a 24-hour period;**
- **Establish site design measures that include minimizing impervious surfaces;**
- **Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff;**
- **Require abatements for newly paved areas over a specific size;**
- **Make exceptions for properties that offer significantly below-market rent or sale prices;**
- **Incorporate these measures for private property with similar measures for Public Works [City projects], while coordinating with EBMUD, BUSD, UCB and LBNL.**



Jesse Arreguín  
City Councilmember, District 4

CONSENT CALENDAR  
September 15, 2015

To: Honorable Mayor and Members of the City Council  
From: Councilmember Jesse Arreguín  
Subject: Mandatory Green Stormwater Infrastructure in New Developments

RECOMMENDATION

Refer to the City Manager and Planning and Community Environmental Advisory Commissions to develop an ordinance requiring large residential developments of 100 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface, to incorporate Green Stormwater Infrastructure (GSI) and water conservation features into new projects.

BACKGROUND

Green Stormwater Infrastrucutre (GSI) is a form of drainage control that uses infiltration, evapotranspiration, or stormwater reuse. Examples of this include permeable pavement, bio swales, green roofs, rain gardens, cisterns and other rain catchment systems.

Cities such as San Francisco and Seattle (which like Berkeley, are bordered by a body of water) have regulations requiring the treatment of stormwater onsite. In April 2010, San Francisco passed an ordinance requiring developments that disturb 5,000 square feet of surface to include stormwater management controls (San Francisco Public Works Code, Article 4.2, Section 147-147.6). Seattle's Stormwater Code (Seattle Municipal Code Section 22.800-22.808) requires the implementation of GSI on developments that add or replace 2,000 square feet of impervious surfaces to the maximum extent possible with the purpose of infiltration, retention, and dispersal.

The City of Berkeley has already taken some steps to promote the use of Green Infrastructure as a way to mitigate negative impacts to our City's watersheds. On June 23, 2009, the City Council passed Resolution No. 64,507, which implemented Bay-Friendly Landscaping policies under the Alameda County Waste Management Authority. The City also complies with the Alameda County Clean Water Program, as passed in Resolution No. 66,004 on February 5, 2013, which aims at reducing pollutants from urban storm runoff. In addition, Measure M funds have supported a number of publicly-funded green infrastructure projects throughout the city. However in order to make a measurable difference to reduce storm water runoff and to conserve water, and to better implement the city's adopted Watershed Management Plan, private developments should install green infrastructure features at the time of construction.

Requiring GSI in developments will help the City better achieve these goals and help mitigate environmental impacts on our watersheds and Bay.

FINANCIAL IMPLICATIONS

Staff Time

ENVIRONMENTAL SUSTAINABILITY

Green Stormwater Infrastructure is a necessity given California's historic drought and West Berkeley's flooding experiences during any sizeable storm. GSI helps in preserving the natural flow of storm runoff which is often obstructed in urban areas. GSI has the ability to retain water, prevent runoff which leads to flooding, and remove pollutants among other environmentally beneficial factors.

CONTACT PERSON

Jesse Arreguin, Councilmember, District 4      510-981-7140

Attachments:

- 1: San Francisco Public Works Code, Article 4.2, Section 147-147.6
- 2: Seattle Municipal Code Section 22.800-22.808



83-10

FILE NO. 100102

ORDINANCE NO.

[Requiring the Development and Maintenance of Stormwater Management Controls]

Ordinance amending the San Francisco Public Works Code by repealing Article 4.2, sections 140 – 149.4, and adding Article 4.2, sections 147 – 147.6, requiring the development and maintenance of stormwater management controls for specified activities that disturb 5,000 square feet or more of the ground surface, and are subject to building, planning and subdivision approvals.

Note: Additions are single-underline italics Times New Roman; deletions are ~~strikethrough italics Times New Roman~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough-normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Environmental Findings. The Planning Department has determined that the actions contemplated in this Ordinance are in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 100102 and is incorporated herein by reference.

Section 2. The San Francisco Public Works Code is hereby amended by repealing Sections 140 – 149.4 of Article 4.2.

Section 3. The San Francisco Public Works Code is hereby amended by adding Sections 147 – 147.6, to Article 4.2, to read as follows:

Article 4.2. SEWER SYSTEM MANAGEMENT.

Section 147. Stormwater Management

(a) The intent of Sections 147 – 147.6 is to protect and enhance the water quality in the City and County of San Francisco's sewer system, stormwater collection system and receiving

1 waters pursuant to, and consistent with Federal and State laws, lawful standards and orders  
2 applicable to stormwater and urban runoff control, and the City's authority to manage and  
3 operate its drainage systems.

4 (b) Urban runoff is a significant cause of pollution throughout California. Pollutants of  
5 concern found in urban runoff include sediments, non-sediment solids, nutrients, pathogens,  
6 oxygen-demanding substances, petroleum hydrocarbons, heavy metals, floatables, polycyclic  
7 aromatic hydrocarbons (PAHs), trash, and pesticides and herbicides.

8 (c) During urban development, two important changes occur. First, where no urban  
9 development has previously occurred, natural vegetated pervious ground cover is converted  
10 to impervious surfaces such as paved highways, streets, rooftops, and parking lots. Natural  
11 vegetated soil can both absorb rainwater and remove pollutants, providing a very effective  
12 purification process. Because pavement and concrete can neither absorb water nor remove  
13 pollutants, the natural purification characteristics of the land are lost. Second, urban  
14 development creates new pollutant sources, including vehicle emissions, vehicle maintenance  
15 wastes, pesticides, household hazardous wastes, pet wastes, trash, and other contaminants  
16 that can be washed into the City's stormwater collection systems.

17 (d) A high percentage of impervious area correlates to a higher rate of stormwater  
18 runoff, which generates greater pollutant loadings to the stormwater collection system,  
19 resulting in turbid water, nutrient enrichment, bacterial contamination, toxic compounds,  
20 temperature increases, and increases of trash or debris.

21 (e) When water quality impacts are considered during the planning stages of a project,  
22 new development and redevelopment projects can more efficiently incorporate measures to  
23 protect water quality.  
24  
25

1 (f) Sections 147 – 147.6 protect the health, safety and general welfare of the City's  
2 residents by:

3 (1) minimizing increases in pollution caused by stormwater runoff from development  
4 that would otherwise degrade local water quality;

5 (3) controlling the discharge to the City's sewer and drainage systems from spills,  
6 dumping or disposal of pollutants; and

7 (4) reducing stormwater run-off rates, volume, and nonpoint source pollution  
8 whenever possible, through stormwater management controls, and ensuring that  
9 these management controls are safe and properly maintained.

10 Section 147.1. Definitions.

11 In addition to the definitions provided in section 119 of Article 4.1 of this Code, the  
12 following definitions shall apply:

13 (a) Best management practices or "BMPs." Structural devices, measures, or programs  
14 used to reduce pollution in stormwater runoff. BMPs manage the quantity and improve the  
15 quality of stormwater runoff in accordance with the Guidelines and applicable state and  
16 federal regulatory requirements.

17 (b) Department. The San Francisco Public Utilities Commission. With regard to  
18 stormwater management in areas of the City under the jurisdiction of the Port Commission,  
19 "Department" means the San Francisco Port Commission until the Port Commission adopts  
20 its own standards and procedures.

21 (c) Development Project. Any activity disturbing 5,000 square feet or more of the  
22 ground surface, measured cumulatively from the effective date of this Article. Activities that  
23 disturb the ground surface include, but are not limited to, the construction, modification,  
24 conversion, or alteration of any building or structure and associated grading, filling,  
25

1 excavation, change in the existing topography, and the addition or replacement of impervious  
2 surface. All sidewalks, parking, driveways, and landscaped and irrigated areas constructed in  
3 conjunction with the Development Project are included in the project area. Development  
4 Projects do not include interior remodeling projects, maintenance activities such as top-layer  
5 grinding, repaving, and re-roofing, or modifications, conversions or alterations of buildings or  
6 structures that does not increase the ground surface footprint of the building or structure.

7 (d) Development runoff requirements. The performance standards set forth in the  
8 Guidelines to address both the construction and post-construction phase impacts of new  
9 Development Projects on stormwater quality.

10 (e) General Manager. The General Manager of the Public Utilities Commission of the  
11 City, or a designated representative of the General Manager. With regard to stormwater  
12 management in areas of the City under the jurisdiction of the Port Commission, the Executive  
13 Director of the San Francisco Port Commission or a designated representative of the  
14 Executive Director shall have the same authority under this Article as the General Manager  
15 until the Port Commission adopts it own standards and procedures regarding stormwater  
16 management in all areas under Port Commission jurisdiction.

17 (f) Guidelines. The Stormwater Design Guidelines adopted by the San Francisco Public  
18 Utilities Commission or the San Francisco Port Commission. The Guidelines contain  
19 requirements pertaining to the type, design, sizing, and maintenance of post-construction  
20 stormwater BMPs.

21 (g) Low Impact Design (LID). A stormwater management approach that promotes the  
22 use of ecological and landscape-based systems that mimic pre-development drainage  
23 patterns and hydrologic processes by increasing retention, detention, infiltration, and  
24 treatment of stormwater at its source.

1 (h) Non-Stormwater Discharge. Any discharge to the City's Stormwater Collection  
2 System that is not composed entirely of Stormwater.

3 (i) Pollutant. Any substance listed in sec. 119(aa) of Article 4.1 of the Public Works  
4 Code or any substance described as a pollutant in the Guidelines.

5 (j) Separate Stormwater/sewer System. Stormwater and sanitary sewage collection  
6 facilities that convey, treat and discharge stormwater and sewage in separated catchbasins,  
7 pipelines, treatment facilities, outfalls, and other facilities, and do not combine stormwater and  
8 sewage in the same facilities.

9 (k) Stormwater. Water that originates from atmospheric moisture (rainfall or snowfall)  
10 and that falls onto land, water or other surfaces.

11 (l) Stormwater Collection System. All City facilities operated by the San Francisco  
12 Public Utilities Commission or the Port of San Francisco for collecting, transporting, treating  
13 and disposing of stormwater. For purposes of this Article, the Stormwater Collection System  
14 includes facilities owned and operated by public entities other than the City, where such  
15 facilities direct stormwater into the Stormwater Collection System and are subject to the  
16 jurisdiction of the San Francisco Public Utilities Commission or the Port of San Francisco as  
17 defined by law, contract, or interjurisdictional agreement.

18 (m) Stormwater Control. A device designed to remove pollution in stormwater runoff  
19 through detention, retention, filtration, direct plant uptake, or infiltration.

20 (n) Stormwater Control Plan. A plan that meets all applicable criteria, performance  
21 standards and other requirements contained in this Article and the Guidelines.

22 Section 147.2. Stormwater Control Plan

23 (a) Development Projects. Every application for a Development Project , including, but  
24 not limited to, a building or encroachment permit conditional use permit, variance, site permit,  
25

1 or design review, shall be accompanied by a Stormwater Control Plan that meets the  
2 stormwater control criteria provided by the Guidelines. No City department shall approve or  
3 issue a conditional use permit, variance, site permit, design review approval, building or  
4 encroachment permit unless and until a Stormwater Control Plan developed in accordance  
5 with this Article and the Guidelines has been approved by the General Manager. All projects  
6 subject to the stormwater management requirements of Chapter 13C of the San Francisco  
7 Building Code shall comply with the requirements of the Guidelines.

8 (b) Subdivision Approvals.

9 (1) Parcel Map or Tentative Subdivision Map Conditions. The Director of Public  
10 Works shall not approve a tentative subdivision map or a parcel map for any property unless  
11 a condition is imposed requiring compliance with all applicable Stormwater Control Plans to  
12 serve the potential uses of the property covered by the parcel map or tentative subdivision  
13 map, as may be further specified in the provisions of this Article or the Guidelines.

14 (2) Subdivision Regulations. The Director of Public Works shall adopt regulations  
15 as necessary, consistent with and in furtherance of this Article, to ensure that all subdividers  
16 of property subject to the provisions of this ordinance provide a Stormwater Control Plan in  
17 compliance with this Article and the Guidelines.

18 (3) Final Maps. The Director of Public Works shall not endorse and file a final map  
19 for property within the boundaries of the City and County of San Francisco without first  
20 determining whether:

21 (A) The subdivider has complied with the conditions imposed on the tentative  
22 subdivision map or parcel map, pursuant to this Article and the Guidelines; and  
23  
24  
25

1 (B) For any such conditions not fully satisfied prior to the recordation of the final  
2 map, the subdivider has signed a certificate of agreement and/or improvement agreement, to  
3 ensure compliance with such conditions.

4 (4) This Subsection (b) shall not apply to tentative subdivision maps or parcel  
5 maps submitted solely for the purposes of condominium conversion, as defined in San  
6 Francisco Subdivision Code Section 1308(d).

7 Sec. 147.3. Limitations and Prohibited Discharges.

8 (a) The establishment, use, maintenance or continuation of any unauthorized drainage  
9 connections to the Stormwater Collection System is prohibited.

10 (b) The discharge of Pollutants and Non-stormwater Discharges into the stormwater  
11 collection facilities located in the Separate Stormwater/sewer System portions of the  
12 Stormwater Collection System is prohibited, except as provided in this section.

13 (c) The following discharges are exempt from the prohibitions set forth subsection (b)  
14 above if the Regional Water Quality Control Board approves the exempted category under  
15 section C. 11. of the City's NPDES permit: uncontaminated pumped groundwater, foundation  
16 drains, water from crawl space pumps, footing drains, air conditioning condensate, irrigation  
17 water, landscape irrigation, lawn or garden watering, planned and unplanned discharges from  
18 potable water sources, water line and hydrant flushing, individual residential car washing,  
19 discharges or flows from emergency fire fighting activities, dechlorinated swimming pool  
20 discharges.

21 Section 147.4. Compliance with Maintenance and Inspection Requirements.

22 (a) All Stormwater Controls shall be maintained according to the Guidelines and the  
23 operation and maintenance plan included in the approved Stormwater Control Plan. The  
24 person(s) or organization(s) responsible for maintenance shall be designated in the plan.  
25

1 Those persons responsible for maintenance shall inspect the Stormwater Controls at least  
2 annually and shall maintain the Stormwater Controls as required by the Guidelines and  
3 described in the Stormwater Control Plan.

4 (b) Operation and Maintenance Inspection and Certificates. Every person who owns,  
5 leases or operates any Stormwater Control or Controls must provide annual self-certification  
6 for inspection and maintenance, as set forth in the Guidelines.

7 (c) The General Manager may perform routine or scheduled inspections, as may be  
8 deemed necessary in the General Manager's sole discretion to carry out the intent of this  
9 Article and the Guidelines, including, but not limited to, random sampling or sampling in areas  
10 with evidence of Stormwater contamination, evidence of the discharge of Non-stormwater to  
11 the Stormwater Collection System, or similar activities.

12 (d) Authority to Sample and Establish Sampling Devices. The General Manager may  
13 require any person discharging Stormwater to the Stormwater Collection System to provide  
14 devices or locations necessary to conduct sampling or metering operations.

15 (e) Notification of Spills. All persons in charge of the Stormwater Controls shall  
16 provide immediate notification to the General Manager of any suspected, confirmed or  
17 unconfirmed release of pollutants creating a risk of non-stormwater discharge into the  
18 Stormwater Collection System. Such persons shall take all necessary steps to ensure the  
19 detection and containment and clean up of such release. This notification requirement is in  
20 addition to and not in lieu of other required notifications.

21 (f) Requirement to Test or Monitor. The General Manager may require that any person  
22 responsible for Stormwater Controls undertake such monitoring activities or analysis and  
23 furnish such reports as the General Manager may specify.

24 Section 147.5 Enforcement and Cost Reimbursement.  
25



1 Any violation of this Article may be enforced by the General Manager pursuant to section 132  
2 of Article 4.1 of the Public Works Code. Persons violating any provision of this Article, the  
3 Guidelines, or department regulations may be subject to penalties and abatement in  
4 accordance with the Guidelines and sections 133 and 134 of Article 4.1 of the Public Works  
5 Code.

6 Section 147.6 Severability

7 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this  
8 Article, is for any reason held to be unconstitutional, invalid or ineffective by any court of  
9 competent jurisdiction, such decision shall not affect the validity or effectiveness of the  
10 remaining portions of this Article. The Board of Supervisors declares that it would have  
11 passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this  
12 Article irrespective of the fact that any one or more sections, subsections, subdivisions,  
13 paragraphs, sentences, clauses, or phrases could be declared unconstitutional, invalid or  
14 ineffective.

17 APPROVED AS TO FORM:  
18 DENNIS A. HERRERA, City Attorney

19 By:   
20 JOHN RODDY  
21 Deputy City Attorney



City and County of San Francisco  
Tails  
Ordinance

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 100102

Date Passed: April 13, 2010

Ordinance amending the San Francisco Public Works Code by repealing Article 4.2, Sections 140 - 149.4, and adding Article 4.2, Sections 147 - 147.6, requiring the development and maintenance of stormwater management controls for specified activities that disturb 5,000 square feet or more of the ground surface, and are subject to building, planning and subdivision approvals.

April 06, 2010 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 10 - Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

Excused: 1 - Alioto-Pier

April 13, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

File No. 100102

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/13/2010 by the Board of Supervisors of the City and County of San Francisco.

Mayor Gavin Newsom

Angela Calvillo  
Clerk of the Board

4/22/2010

Date Approved

Subtitle VIII. - Stormwater Code<sup>[17]</sup>

Footnotes:

--- (17) ---

**Cross reference**— For provisions regarding emergency control of drainage problems, mud flows and earth slides, see Chapter 10.06 of this Code.

## Chapter 22.800 - TITLE, PURPOSE, SCOPE AND AUTHORITY

Sections:

### 22.800.010 - Title

This subtitle, comprised of Chapters 22.800 through 22.808, shall be known as the "Stormwater Code" and may be cited as such.

(Ord. 123105, § 2, 2009.)

### 22.800.020 - Purpose

- A. The provisions of this subtitle shall be liberally construed to accomplish its remedial purposes, which are:
1. Protect, to the greatest extent practicable, life, property and the environment from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity;
  2. Protect the public interest in drainage and related functions of drainage basins, watercourses and shoreline areas;
  3. Protect receiving waters from pollution, mechanical damage, excessive flows and other conditions in their drainage basins which will increase the rate of downcutting, streambank erosion, and/or the degree of turbidity, siltation and other forms of pollution, or which will reduce their low flows or low levels to levels which degrade the environment, reduce recharging of groundwater, or endanger aquatic and benthic life within these receiving waters and receiving waters of the state;
  4. Meet the requirements of state and federal law and the City's municipal stormwater National Pollutant Discharge Elimination System ("NPDES") permit;
  5. To protect the functions and values of environmentally critical areas as required under the state's Growth Management Act and Shoreline Management Act;
  6. To protect the public drainage system from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity; and
  7. Fulfill the responsibilities of the City as trustee of the environment for future generations.
- B. It is expressly the purpose of this subtitle to provide for and promote the health, safety and welfare of the general public. This subtitle is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms.
- C. It is expressly acknowledged that water quality degradation can result either directly from one discharge or through the collective impact of many small discharges. Therefore, the water quality protection measures in this subtitle are necessary to protect the health, safety and welfare of the residents of Seattle and the integrity of natural resources for the benefit of all and for the purposes of this subtitle. Such water quality protection measures are required under the federal Clean Water Act, 33 U.S.C. Section 1251, et seq., and in response to the obligations of the City's municipal

stormwater discharge permit, issued by the State of Washington under the federal National Pollutant Discharge Elimination System program.

(Ord. 123105, § 2, 2009.)

22.800.030 - Scope and Applicability

This subtitle applies to:

- A. All grading and drainage and erosion control, whether or not a permit is required;
- B. All land disturbing activities, whether or not a permit is required;
- C. All discharges directly or indirectly to a public drainage system;
- D. All discharges directly or indirectly into receiving waters within or contiguous to Seattle city limits;
- E. All new and existing land uses; and
- F. All real property.

(Ord. 123105, § 2, 2009.)

22.800.040 - Exemptions, Adjustments, and Exceptions

A. Exemptions.

- 1. The following land uses are exempt from the provisions of this subtitle:
  - a. Commercial agriculture, including only those activities conducted on lands defined in RCW 84.34.020(2), and production of crops or livestock for wholesale trade; and
  - b. Forest practices regulated under Title 222 Washington Administrative Code, except for Class IV general forest practices, as defined in WAC 222-16-050, that are conversions from timber land to other uses.
- 2. The following land disturbing activities are not required to comply with the specific minimum requirements listed below.
  - a. Maintenance, repair, or installation of underground or overhead utility facilities, such as, but not limited to, pipes, conduits and vaults, and that includes replacing the ground surface with in-kind material or materials with similar runoff characteristics are not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment), except as modified as follows:
    - 1) Installation of a new or replacement of an existing public drainage system, public combined sewer, or public sanitary sewer in the public right-of-way shall comply with Section 22.805.060 (Minimum requirements for Roadway Projects) when these activities are implemented as publicly bid capital improvement projects funded by Seattle Public Utilities; and
    - 2) Installation of underground or overhead utility facilities that are integral with and contiguous to a road-related project shall comply with Section 22.805.060 (Minimum requirements for Roadway Projects).
  - b. Road maintenance practices limited to the following activities are not required to comply with Section 22.805.060 (Minimum requirements for Roadway Projects), Section 22.805.080 (Minimum Requirements for Flow Control), or Section 22.805.090 (Minimum Requirements for Treatment):
    - 1) Pothole and square cut patching;
    - 2) Overlaying existing asphalt or concrete or brick pavement with asphalt or concrete without expanding the area of coverage;

- 3) Shoulder grading;
  - 4) Reshaping or regrading drainage ditches;
  - 5) Crack sealing; and
  - 6) Vegetation maintenance.
3. Sites that produce no runoff as determined by a licensed civil engineer using a continuous runoff model approved by the Director are not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control).
  4. When a portion of the site being developed discharges only to the public combined sewer, that portion is not required to comply with the provision of subsection 22.805.020.K (Install Source Control BMPs) unless the Director determines that these activities pose a hazard to public health, safety or welfare; endanger any property; adversely affect the safety and operation of city right-of-way, utilities, or other property owned or maintained by the City; or adversely affect the functions and values of an environmentally critical area or buffer.
  5. Residential activities are not required to comply with the provision of subsection 22.805.020.K (Install Source Control BMPs) unless the Director determines that these activities pose a hazard to public health, safety or welfare; endanger any property; adversely affect the safety and operation of city right-of-way, utilities, or other property owned or maintained by the City; or adversely affect the functions and values of an environmentally critical area or buffer.
  6. With respect to all state highway right-of-way under WSDOT control within the jurisdiction of the City of Seattle, WSDOT shall use the current, approved Highway Runoff Manual (HRM) for its existing and new facilities and rights-of-way, as addressed in WAC 173-270-030(1) and (2). Exceptions to this exemption, where more stringent stormwater management requirements apply, are addressed in WAC 173-270-030(3)(b) and (c).
    - a. When a state highway is located in the jurisdiction of a local government that is required by Ecology to use more stringent standards to protect the quality of receiving waters, WSDOT shall comply with the same standards to promote uniform stormwater management.
    - b. WSDOT shall comply with standards identified in watershed action plans for WSDOT rights-of-way, as required by WAC 400-12-570.
    - c. Other instances where more stringent local stormwater standards apply are projects subject to tribal government standards or to the stormwater management-related permit conditions imposed under Chapter 25.09 to protect environmentally critical areas and their buffers (under the Growth Management Act), an NPDES permit, or shoreline master programs (under the Shoreline Management Act). In addition, WSDOT shall comply with local jurisdiction stormwater standards when WSDOT elects, and is granted permission, to discharge stormwater runoff into a municipality's stormwater system or combined sewer system.
- B. Adjustments.
1. The Director may approve a request for adjustments to the requirements of this subtitle when the Director finds that:
    - a. The adjustment provides substantially equivalent environmental protection; and
    - b. The objectives of safety, function, environmental protection, and facility maintenance are met, based on sound engineering practices.
  2. During construction, the Director may require, or the applicant may request, that the construction of drainage control facilities and associated project designs be adjusted if physical conditions are discovered on the site that are inconsistent with the assumptions upon which the approval was based, including but not limited to unexpected soil and/or water conditions, weather generated problems, or changes in the design of the improved areas.

3. A request by the applicant for adjustments shall be submitted to the Director for approval prior to implementation. The request shall be in writing and shall provide facts substantiating the requirements of subsection 22.805.080.B1, and if made during construction, the factors in subsection B2. Any such modifications made during the construction of drainage control facilities shall be recorded on the final approved drainage control plan, a revised copy of which shall be filed by the Director.

C. Exceptions.

1. The Director may approve a request for an exception to the requirements of this subtitle when the applicant demonstrates that the exception will not increase risks in the vicinity and/or downstream of the property to public health, safety and welfare, or to water quality, or to public and private property, and:
  - a. The requirement would cause a severe and unexpected financial hardship that outweighs the requirement's benefits, and the criteria for an adjustment cannot be met; or
  - b. The requirement would cause harm or a significant threat of harm to public health, safety and welfare, the environment, or public and private property, and the criteria for an adjustment cannot be met; or
  - c. The requirement is not technically feasible, and the criteria for an adjustment cannot be met; or
  - d. An emergency situation exists that necessitates approval of the exception.
2. An exception shall only be granted to the extent necessary to provide relief from the economic hardship, to alleviate the harm or threat of harm, to the degree that compliance with the requirement becomes technically feasible, or to perform the emergency work that the Director determines exists.
3. An applicant is not entitled to an exception, whether or not the criteria allowing approval of an exception are met.
4. The Director may require an applicant to provide additional information at the applicant's expense, including, but not limited to an engineer's report or analysis.
5. When an exception is granted, the Director may impose new or additional requirements to offset or mitigate harm that may be caused by granting the exception, or that would have been prevented if the exception had not been granted.
6. Public notice of an application for an exception and of the Director's decision on the application shall be provided in the manner prescribed for Type II land use decisions, as set forth in Chapter 23.76.
7. The Director's decision shall be in writing with written findings of fact. Decisions approving an exception based on severe and unexpected economic hardship shall address all the factors in subsection 22.805.080.C.8.
8. An application for an exception on the grounds of severe and unexpected financial hardship must describe, at a minimum, all of the following:
  - a. The current, pre-project use of the site; and
  - b. How application of the requirement(s) for which an exception is being requested restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of this current subtitle; and
  - c. The possible remaining uses of the site if the exception were not granted; and
  - d. The uses of the site that would have been allowed prior to the adoption of this subtitle; and

- e. A comparison of the estimated amount and percentage of value loss as a result of the requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the requirements of this subtitle; and
  - f. The feasibility of the owner or developer to alter the project to apply the requirements of this subtitle.
9. In addition to rights under Chapter 3.02 of the Seattle Municipal Code, any person aggrieved by a Director's decision on an application for an exception may appeal to the Hearing Examiner's Office by filing an appeal, with the applicable filing fee, as set forth in Section 23.76.022. However, appeals of a Notice of Violation, Director's order, or invoice issued pursuant to this subtitle shall follow the required procedure established in Chapter 22.808 of this subtitle.
10. The Hearing Examiner shall affirm the Director's determination on the exception unless the examiner finds the determination is clearly erroneous based on substantial evidence. The applicant for the exception shall have the burden of proof on all issues related to justifying the exception.
11. The Director shall keep a record, including the Director's written findings of fact, on all approved requests for exceptions.

(Ord. [124758](#), § 1, 2015; Ord. 123105, § 2, 2009.)

#### 22.800.050 - Potentially Hazardous Locations

- A. Any site on a list, register, or data base compiled by the United States Environmental Protection Agency or the Washington State Department of Ecology for investigation, cleanup, or other action regarding contamination under any federal or state environmental law shall be a potentially hazardous location under this subtitle. When EPA or Ecology removes the site from the list, register or data base, or when the Director of DPD determines the owner has otherwise established the contamination does not pose a present or potential threat to human health or the environment, the site will no longer be considered a potentially hazardous location.
- B. The following property may also be designated by the Director of DPD as potentially hazardous locations:
  - 1. Existing and/or abandoned solid waste disposal sites;
  - 2. Hazardous waste treatment, storage, or disposal facilities, all as defined by the federal Solid Waste Disposal Act, 42 U.S.C. section 6901, et seq.

(Ord. 123105, § 2, 2009.)

#### 22.800.060 - Compliance With Other Laws

- A. The requirements of this subtitle are minimum requirements. They do not replace, repeal, abrogate, supersede or affect any other more stringent requirements, rules, regulations, covenants, standards, or restrictions. Where this subtitle imposes requirements that are more protective of human health or the environment than those set forth elsewhere, the provisions of this subtitle shall prevail. When this subtitle imposes requirements that are less protective of human health or the environment than those set forth elsewhere, the provisions of the more protective requirements shall prevail.
- B. Approvals and permits granted under this subtitle are not waivers of the requirements of any other laws, nor do they indicate compliance with any other laws. Compliance is still required with all applicable federal, state and local laws and regulations, including rules promulgated under authority of this subtitle.
- C. Compliance with the provisions of this subtitle and of regulations and manuals adopted by the City in relation to this subtitle does not necessarily mitigate all impacts to the environment. Thus, compliance with this subtitle and related regulations and manuals should not be construed as mitigating all drainage water or other environmental impacts, and additional mitigation may be

required to protect the environment. The primary obligation for compliance with this subtitle, and for preventing environmental harm on or from property, is placed upon responsible parties as defined by this subtitle.

(Ord. 123105, § 2, 2009.)

22.800.070 - Minimum Requirements for City Agency Projects

A. Compliance. City agencies shall comply with all the requirements of this subtitle except as specified below:

1. City agencies are not required to obtain permits and approvals under this subtitle, other than inspections as set out in subsection B of this section, for work performed within a public right-of-way or for work performed for the operation and maintenance of park lands under the control or jurisdiction of the Department of Parks and Recreation. Where the work occurs in a public right-of-way, it shall also comply with Seattle Municipal Code Title 15, Street and Sidewalk Use, including the applicable requirements to obtain permits or approvals.
2. A City agency project, as defined in Section 22.801.170, that is not required to obtain permit(s) and approval(s) per subsection 22.800.070.A.1 and meets all of the conditions set forth below, is not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment).
  - a. The project begins land disturbing activities within 18 months of the effective date of this subtitle, and;
  - b. The project complies with subsections 22.802.015.C.4, 22.802.016. B.1, and 22.802.016.B.2 of the Stormwater, Grading and Drainage Control Code that was made effective July 5, 2000 by Ordinance 119965, and
  - c. The project meets one or more of the following criteria:
    - 1) Project funding was appropriated as identified in Ordinance 122863 titled, "An ordinance adopting a budget, including a capital improvement program and a position list, for the City of Seattle for 2009"; or
    - 2) Project received or will receive voter approval of financing before January 1, 2009; or
    - 3) Project received or will receive funds based on grant application(s) submitted before January 1, 2009.

B. Inspection.

1. When the City conducts projects for which review and approval is required under Chapter 22.807 (Drainage Control Review and Application Requirements) the work shall be inspected by the City agency conducting the project or supervising the contract for the project. The inspector for the City agency shall be responsible for ascertaining that the grading and drainage control is done in a manner consistent with the requirements of this subtitle.
2. A City agency need not provide an inspector from its own agency provided either:
  - a. The work is inspected by an appropriate inspector from another City agency; or
  - b. The work is inspected by an appropriate inspector hired for that purpose by a City agency; or
  - c. The work is inspected by the licensed civil or geotechnical engineer who prepared the plans and specifications for the work; or
  - d. A permit or approval is obtained from the Director of DPD, and the work is inspected by the Director.



- C. Certification of Compliance. City agencies shall meet the same standards as non-City projects, except as provided in subsection 22.800.070.A, and shall certify that each individual project meets those standards.

(Ord. 123105, § 2, 2009.)

#### 22.800.075 - Compliance by Public Agencies

Whether or not they are required to obtain permits or submit documents, public agencies are subject to the substantive requirements of this subtitle, unless adjustments or exceptions are granted as set forth in Section 22.800.040 (Exemptions, Adjustments, and Exceptions) or the requirements have been waived under subsection 22.807.020.A.3.

(Ord. 123105, § 2, 2009.)

#### 22.800.080 - Authority

- A. For projects not conducted in the public right-of-way, the Director of DPD has authority regarding the provisions of this subtitle pertaining to grading, review of drainage control plans, and review of construction stormwater control plans, and has inspection and enforcement authority pertaining to temporary erosion and sediment control measures.
- B. The Director of SPU has authority regarding all other provisions of this subtitle pertaining to drainage water, drainage, and erosion control, including inspection and enforcement authority. The Director of SPU may delegate authority to the Director of DPD or the Director of Seattle Department of Transportation regarding the provisions of this subtitle pertaining to review of drainage control plans, review of erosion control plans, and inspection and enforcement authority pertaining to temporary erosion and sediment control measures for projects conducted in the public right-of-way.
- C. The Directors of DPD, SDOT and SPU are authorized to take actions necessary to implement the provisions and purposes of this subtitle in their respective spheres of authority to the extent allowed by law, including, but not limited to, the following: promulgating and amending rules and regulations, pursuant to the Administrative Code, Chapter 3.02 of the Seattle Municipal Code; establishing and conducting inspection programs; establishing and conducting or, as set forth in Section 22.802.040, requiring responsible parties to conduct monitoring programs, which may include sampling of discharges to or from drainage control facilities, the public drainage system, or receiving waters; taking enforcement action; abating nuisances; promulgating guidance and policy documents; and reviewing and approving, conditioning, or disapproving required submittals and applications for approvals and permits. The Directors are authorized to exercise their authority under this subtitle in a manner consistent with their legal obligations as determined by the courts or by statute.
- D. The Director of SPU is authorized to develop, review, or approve drainage basin plans for managing receiving waters, drainage water, and erosion within individual basins. A drainage basin plan may, when approved by the Director of SPU, be used to modify requirements of this subtitle, provided the level of protection for human health, safety and welfare, the environment, and public or private property will equal or exceed that which would otherwise be achieved. A drainage basin plan that modifies the minimum requirements of this subtitle at a drainage basin level must be reviewed and approved by Ecology and adopted by City ordinance.
- E. The Director of SPU is authorized, to the extent allowed by law, to develop, review, or approve an Integrated Drainage Plan as an equivalent means of complying with the requirements of this subtitle, in which the developer of a project voluntarily enters into an agreement with the Director of SPU to implement an Integrated Drainage Plan that is specific to one or more sites where best management practices are employed such that the cumulative effect on the discharge from the site(s) to the same receiving water is the same or better than that which would be achieved by a less integrated, site-by-site implementation of best management practices.
- F. The Director of SPU is authorized, to the extent allowed by law, to enter into an agreement with the developer of a project for the developer to voluntarily contribute funds toward the construction of one

or more drainage control facilities that mitigate the impacts to the same receiving water that have been identified as a consequence of the proposed development.

- G. The Director of SPU is authorized, to the extent allowed by law, to enter into an agreement with the developer of a project for the developer to voluntarily construct one or more drainage control facilities at an alternative location, determined by the Director, to mitigate the impacts to the same receiving water that have been identified as a consequence of the proposed development.
- H. If the Director of SPU determines that a discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, a private drainage system, or a receiving water within or contiguous to Seattle city limits, has exceeded, exceeds, or will exceed water quality standards at the point of assessment, or has caused or contributed, is causing or contributing, or will cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit, and cannot be adequately addressed by the required best management practices, then the Director of SPU has the authority, to the extent allowed by law, to issue an order under Chapter 22.808 requiring the responsible party to undertake more stringent or additional best management practices. These best management practices may include additional source control or structural best management practices or other actions necessary to cease the exceedance, the prohibited discharge, or causing or contributing to the known or likely violation of water quality standards in the receiving water or the known or likely violation of the City's municipal stormwater NPDES permit. Structural best management practices may include but shall not be limited to: drainage control facilities, structural source controls, treatment facilities, constructed facilities such as enclosures, covering and/or berming of container storage areas, and revised drainage systems. For existing discharges as opposed to new projects, the Director may allow 12 months to install a new flow control facility, structural source control, or treatment facility after the Director notifies the responsible party in writing of the Director's determination pursuant to this subsection and of the flow control facility, structural source control, or treatment facility that must be installed.
- I. Unless an adjustment per subsection 22.800.040.B or an exception per subsection 22.800.040.C is approved by the Director, an owner or occupant who is required, or who wishes, to connect to a public drainage system shall be required to extend the public drainage system if a public drainage system is not accessible within an abutting public area across the full frontage of the property.
- J. The Director of DPD has the authority, to the extent allowed by law, to require sites with addition or replacement of less than 5,000 square feet of impervious surface or with less than one acre of land disturbing activity to comply with the requirements set forth in Section 22.805.080 or Section 22.805.090 when necessary to accomplish the purposes of this subtitle. In making this determination, the Director of DPD may consider, but not be limited to, the following attributes of the site: location within an Environmentally Critical Area; proximity and tributary to an Environmentally Critical Area; and proximity and tributary to an area with known erosion or flooding problems.

(Ord. 123105, § 2, 2009.)

#### 22.800.090 - City Not Liable

- A. Nothing contained in this subtitle is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this subtitle, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement of this subtitle, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this subtitle by its officers, employees or agents.
- B. The Director or any employee charged with the enforcement of this subtitle, acting in good faith and without malice on behalf of the City, shall not be personally liable for any damage that may accrue to persons or property as a result of any act required by the City, or by reason of any act or omission in the discharge of these duties. Any suit brought against the Director of DPD, Director of SPU or other

employee because of an act or omission performed in the enforcement of any provisions of this subtitle, shall be defended by the City.

- C. Nothing in this subtitle shall impose any liability on the City or any of its officers or employees for cleanup or any harm relating to sites containing hazardous materials, wastes or contaminated soil.

(Ord. 123105, § 2, 2009.)

#### Chapter 22.801 - DEFINITIONS

##### Sections:

##### 22.801.010 - General

For the purpose of this subtitle, the words listed in this chapter have the following meanings, unless the context clearly indicates otherwise. Terms relating to pollutants and to hazardous wastes, materials, and substances, where not defined in this subtitle, shall be as defined in Washington Administrative Code Chapters 173-303, 173-304 and 173-340, the Seattle Building Code or the Seattle Fire Code, including future amendments to those codes. Words used in the singular include the plural, and words used in the plural include the singular.

(Ord. 123105, § 2, 2009.)

##### 22.801.020 - "A"

"Agency" means any governmental entity or its subdivision.

"Agency, City" means "City agency" as defined in Section 25.09.520.

"Agency with jurisdiction" means those agencies with statutory authority to approve, condition or deny permits, such as the United States Environmental Protection Agency, the Washington State Department of Ecology or Public Health—Seattle & King County.

"Approved" means approved by the Director.

(Ord. 123668, § 1, 2011; Ord. 123105, § 2, 2009.)

##### 22.801.030 - "B"

"Basin plan" means a plan to manage the quality and quantity of drainage water in a watershed or a drainage basin, including watershed action plans.

"Basic treatment facility" means a drainage control facility designed to reduce concentrations of total suspended solids in drainage water.

"Best management practice (BMP)" means a schedule of activities, prohibitions of practices, operational and maintenance procedures, structural facilities, or managerial practice or device that, when used singly or in combination, prevents, reduces, or treats contamination of drainage water, prevents or reduces soil erosion, or prevents or reduces other adverse effects of drainage water on receiving waters. When the Directors develop rules and/or manuals prescribing best management practices for particular purposes, whether or not those rules and/or manuals are adopted by ordinance, BMPs prescribed in the rules and/or manuals shall be the BMPs required for compliance with this subtitle.

"Building permit" means a document issued by the Department of Planning and Development authorizing construction or other specified activity in accordance with the Seattle Building Code (Chapter 22.100) or the Seattle Residential Code (Chapter 22.150).

(Ord. 123105, § 2, 2009.)

##### 22.801.040 - "C"

"Capacity-constrained system" means a drainage system that the Director of SPU has determined to have inadequate capacity to carry drainage water.

"Cause or contribute to a violation" means and includes acts or omissions that create a violation, that increase the duration, extent or severity of a violation, or that aid or abet a violation.

"Certified Erosion and Sediment Control Lead (CESCL)" means an individual who has current certification through an approved erosion and sediment control training program that meets the minimum training standards established by the Washington State Department of Ecology.

"Civil engineer, licensed" means a person who is licensed by the State of Washington to practice civil engineering.

"City agency" means "City agency" as defined in Section 25.09.520.

"Combined sewer." See "public combined sewer."

"Construction Stormwater Control Plan" means a document that explains and illustrates the measures to be taken on the construction site to control pollutants on a construction project.

"Compaction" means the densification of earth material by mechanical means.

"Containment area" means the area designated for conducting pollution-generating activities for the purposes of implementing source controls or designing and installing source controls or treatment facilities.

"Contaminate" means the addition of sediment, any other pollutant or waste, or any illicit or prohibited discharge.

"Creek" means a Type 2-5 water as defined in WAC 222-16-031 and is used synonymously with "stream."

(Ord. 123105, § 2, 2009.)

#### 22.801.050 - "D"

"Damages" means monetary compensation for harm, loss, costs, or expenses incurred by the City, including, but not limited, to the following: costs of abating or correcting violations of this subtitle; fines or penalties the City incurs as a result of a violation of this subtitle; and costs to repair or clean the public drainage system as a result of a violation. For the purposes of this subtitle, damages do not include compensation to any person other than the City.

"Designated receiving water" means the Duwamish River, Puget Sound, Lake Washington, Lake Union, Elliott Bay, Portage Bay, Union Bay, the Lake Washington Ship Canal, and other receiving waters determined by the Director of SPU and approved by Ecology as having sufficient capacity to receive discharges of drainage water such that a site discharging to the designated receiving water is not required to implement flow control.

"Detention" means temporary storage of drainage water for the purpose of controlling the drainage discharge rate.

"Development" means land disturbing activity or the addition or replacement of impervious surface.

"Director" means the Director of the Department authorized to take a particular action, and the Director's designees, who may be employees of that department or another City department.

"Director of DPD" means the Director of the Department of Planning and Development of The City of Seattle and/or the designee of the Director of Planning and Development, who may be employees of that department or another City department.

"Director of SDOT" means the Director of Seattle Department of Transportation of The City of Seattle and/or the designee of the Director of Seattle Department of Transportation, who may be employees of that department or another City department.

"Director of SPU" means the Director of Seattle Public Utilities of The City of Seattle and/or the designee of the Director of Seattle Public Utilities, who may be employees of that department or another City department.

"Discharge point" means the location from which drainage water from a site is released.

"Discharge rate" means the rate at which drainage water is released from a site. The discharge rate is expressed as volume per unit of time, such as cubic feet per second.

"DPD" means the Department of Planning and Development.

"Drainage basin" means the tributary area or subunit of a watershed through which drainage water is collected, regulated, transported, and discharged to receiving waters.

"Drainage control" means the management of drainage water. Drainage control is accomplished through one or more of the following: collecting, conveying, and discharging drainage water; controlling the discharge rate from a site; controlling the flow duration from a site; and separating, treating or preventing the introduction of pollutants.

"Drainage control facility" means any facility, including best management practices, installed or constructed for the purpose of controlling the discharge rate, flow duration, quantity, and/or quality of drainage water.

"Drainage control plan" means a plan for collecting, controlling, transporting and disposing of drainage water falling upon, entering, flowing within, and exiting the site, including designs for drainage control facilities.

"Drainage system" means a system intended to collect, convey and control release of only drainage water. The system may be either publicly or privately owned or operated, and the system may serve public or private property. It includes constructed and/or natural components such as pipes, ditches, culverts, streams, creeks, or drainage control facilities.

"Drainage water" means stormwater and all other discharges that are permissible per subsection 22.802.030.A.

(Ord. 123105, § 2, 2009.)

22.801.060 - "E"

"Earth material" means any rock, gravel, natural soil, fill, or re-sedimented soil, or any combination thereof, but does not include any solid waste as defined by RCW 70.95.

"Ecology" means the Washington State Department of Ecology.

"Effective impervious surface" means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system.

"Enhanced treatment facility" means a drainage control facility designed to reduce concentrations of dissolved metals in drainage water.

"Environmentally critical area" means an area designated in Section 25.09.020.

"EPA" means the United States Environmental Protection Agency.

"Erosion" means the wearing away of the ground surface as a result of mass wasting or of the movement of wind, water, ice, or other geological agents, including such processes as gravitational creep. Erosion also means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

"Excavation" means the mechanical removal of earth material.

"Exception" means relief from a requirement of this subtitle to a specific project.

(Ord. 123105, § 2, 2009.)

22.801.070 - "F"

"Fill" means a deposit of earth material placed by artificial means.

"Flow control" means controlling the discharge rate, flow duration, or both of drainage water from the site through means such as infiltration or detention.

"Flow control facility" means a drainage control facility for controlling the discharge rate, flow duration, or both of drainage water from a site.

"Flow-critical receiving water" means a surface water that is not a designated receiving water as defined in this subtitle.

"Flow duration" means the aggregate time that peak flows are at or above a particular flow rate of interest.

(Ord. 123105, § 2, 2009.)

22.801.080 - "G"

"Garbage" means putrescible waste.

"Geotechnical engineer" or "Geotechnical/civil engineer" means a professional civil engineer licensed by The State of Washington who has at least four years of professional experience as a geotechnical engineer, including experience with landslide evaluation.

"Grading" means excavation, filling, in-place ground modification, removal of roots or stumps that includes ground disturbance, stockpiling of earth materials, or any combination thereof, including the establishment of a grade following demolition of a structure.

"Green stormwater infrastructure" means a drainage control facility that uses infiltration, evapotranspiration, or stormwater reuse. Examples of green stormwater infrastructure include permeable pavement, bioretention facilities, and green roofs.

(Ord. 123105, § 2, 2009.)

22.801.090 - "H"

"High-use sites" means sites that typically generate high concentrations of oil due to high traffic turnover or the frequent transfer of oil. High-use sites include:

1. An area of a commercial or industrial site subject to an expected average daily traffic (ADT) count equal to or greater than 100 vehicles per 1,000 square feet of gross building area;
2. An area of a commercial or industrial site subject to petroleum storage and transfer in excess of 1,500 gallons per year, not including routinely delivered heating oil;
3. An area of a commercial or industrial site subject to parking, storage or maintenance of 25 or more vehicles that are over 10 tons gross weight (trucks, buses, trains, heavy equipment, etc.);
4. A road intersection with a measured ADT count of 25,000 vehicles or more on the main roadway and 15,000 vehicles or more on any intersecting roadway, excluding projects proposing primarily pedestrian or bicycle use improvements.

(Ord. 123105, § 2, 2009.)

22.801.100 - "I"

"Impervious Surface" means any surface exposed to rainwater from which most water runs off. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, formal planters, parking lots or storage areas, concrete or asphalt paving, permeable paving, gravel surfaces subjected to vehicular traffic, compact gravel, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purposes of

determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of stormwater modeling.

Impervious surface, replaced. See "replaced or replacement of impervious surface."

"Infiltration" means the downward movement of water from the surface to the subsoil.

"Infiltration facility" means a drainage control facility that temporarily stores, and then percolates drainage water into the underlying soil.

"Integrated Drainage Plan" means a plan developed, reviewed, and approved per subsection 22.800.080.E.

"Interflow" means that portion of rainfall and other precipitation that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface.

"Inspector" means a City inspector, their designee, or licensed civil engineer performing the inspection work required by this subtitle.

(Ord. 123105, § 2, 2009.)

22.801.110 - "J"

"Joint project" means a project that is both a parcel-based project and a roadway project.

(Ord. 123105, § 2, 2009.)

22.801.130 - "L"

"Land disturbing activity" means any activity that results in a movement of earth, or a change in the existing soil cover, both vegetative and nonvegetative, or the existing topography. Land disturbing activities include, but are not limited to, clearing, grading, filling, excavation, or addition of new or the replacement of impervious surface. Compaction, excluding hot asphalt mix, that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activities.

"Large project" means a project including 5,000 square feet or more of new impervious surface or replaced impervious surface, individually or combined, or one acre or more of land disturbing activity.

"Listed creek basins" means Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek.

(Ord. 123105, § 2, 2009.)

22.801.140 - "M"

"Master use permit" means a document issued by DPD giving permission for development or use of land or street right-of-way in accordance with Chapter 23.76.

"Maximum extent feasible" means the requirement is to be fully implemented, constrained only by the physical limitations of the site, practical considerations of engineering design, and reasonable considerations of financial costs and environmental impacts.

"Municipal stormwater NPDES permit" means the permit issued to the City under the federal Clean Water Act for public drainage systems within the City limits.

(Ord. 123105, § 2, 2009.)

22.801.150 - "N"

"Native vegetation" means "native vegetation" as defined in Section 25.09.520.

"Nutrient-critical receiving water" means a surface water or water segment that that has been listed as Category 5 (impaired) under Section 303(d) of the Clean Water Act for total phosphorus through the State of Washington's Water Quality Assessment program and approved by EPA.

"NPDES" means National Pollutant Discharge Elimination System, the national program for controlling discharges under the federal Clean Water Act.

"NPDES permit" means an authorization, license or equivalent control document issued by the United States Environmental Protection Agency or the Washington State Department of Ecology to implement the requirements of the NPDES program.

(Ord. 123105, § 2, 2009.)

22.801.160 - "O"

"Oil control treatment facility" means a drainage control facility designed to reduce concentrations of oil in drainage water.

"Owner" means any person having title to and/or responsibility for, a building or property, including a lessee, guardian, receiver or trustee, and the owner's duly authorized agent.

(Ord. 123105, § 2, 2009.)

22.801.170 - "P"

"Parcel-based project" means any project that is not a roadway project, single-family residential project, sidewalk project, or trail project.

"Person" means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the State of Washington, political subdivision or agency of the State of Washington, public authority or other public body, corporation, limited liability company, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, and the United States or any instrumentality thereof.

"Pervious surface" means a surface that is not impervious. See also, "impervious surface".

"Phosphorus treatment facility" means a drainage control facility designed to reduce concentrations of phosphorus in drainage water.

"Plan" means a graphic or schematic representation, with accompanying notes, schedules, specifications and other related documents, or a document consisting of checklists, steps, actions, schedules, or other contents that has been prepared pursuant to this subtitle, such as a drainage control plan, construction stormwater control plan, stormwater pollution prevention plan, and integrated drainage plan.

"Pollution-generating activity" means any activity that is regulated by the joint SPU/DPD Directors' Rule titled, "Source Control Technical Requirements Manual" or activities with similar impacts on drainage water. These activities include, but are not limited to: cleaning and washing activities; transfer of liquid or solid material; production and application activities; dust, soil, and sediment control; commercial animal care and handling; log sorting and handling; boat building, mooring, maintenance, and repair; logging and tree removal; mining and quarrying of sand, gravel, rock, peat, clay, and other materials; cleaning and maintenance of swimming pool and spas; deicing and anti-icing operations for airports and streets; maintenance and management of roof and building drains at manufacturing and commercial buildings; maintenance and operation of railroad yards; maintenance of public and utility corridors and facilities; and maintenance of roadside ditches.

"Pollution-generating impervious surface" means those impervious surfaces considered to be a significant source of pollutants in drainage water. Such surfaces include those that are subject to:



vehicular use; certain industrial activities; or storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall. Erodible or leachable materials, wastes, or chemicals are those substances which, when exposed to rainfall, measurably alter the physical or chemical characteristics of the drainage water. Examples include: erodible soils that are stockpiled; uncovered process wastes; manure; fertilizers; oily substances; ashes; kiln dust; and garbage dumpster leakage. Metal roofs are also considered to be PGIS unless they are coated with an inert, non-leachable material (e.g., baked-on enamel coating).

A surface, whether paved or not, shall be considered subject to vehicular use if it is regularly used by motor vehicles. The following are considered regularly-used surfaces: roads; unvegetated road shoulders; permeable pavement; bike lanes within the traveled lane of a roadway; driveways; parking lots; unfenced fire lanes; vehicular equipment storage yards; and airport runways.

The following are not considered regularly-used surfaces: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles; fenced fire lanes; and infrequently used maintenance access roads.

"Pollution-generating pervious surface" means any non-impervious surface subject to use of pesticides and fertilizers or loss of soil, and typically includes lawns, landscaped areas, golf courses, parks, cemeteries, and sports fields.

"Pre-developed condition" means the vegetation and soil conditions that are used to determine the allowable post-development discharge peak flow rates and flow durations, such as pasture or forest.

"Project" means the addition or replacement of impervious surface or the undertaking of land disturbing activity on a site.

"Public combined sewer" means a publicly owned and maintained system which carries drainage water and wastewater and flows to a publicly owned treatment works.

"Public drainage system" means a drainage system owned or used by the City of Seattle.

"Public place" means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, and planting (parking) strips, squares, triangles and right-of-way for public use and the space above or beneath its surface, whether or not opened or improved.

"Public sanitary sewer" means the sanitary sewer that is owned or operated by a City agency.

"Public storm drain" means the part of a public drainage system that is wholly or partially piped, owned or operated by a City agency, and designed to carry only drainage water.

(Ord. 123105, § 2, 2009.)

22.801.190 - "R"

"Real property" means "real property" as defined in Section 3.110.

"Receiving water" means the surface water or wetland receiving drainage water.

"Repeat Violation" means a prior violation of this subtitle within the preceding five years that became a final order or decision of the Director or a court. The violation does not need to be the same nor occur on one site to be considered repeat.

"Replaced impervious surface" or "replacement of impervious surface" means for structures, the removal and replacement of impervious surface down to the foundation. For other impervious surface, the impervious surface that is removed down to earth material and a new impervious surface is installed.

"Responsible party" means all of the following persons:

1. Owners, operators, and occupants of property; and,
2. Any person causing or contributing to a violation of the provisions of this subtitle.

"Right-of-way" means "right-of-way" as defined in Section 23.84A.032.

"Roadway" means "roadway" as defined in Section 23.84A.032.

"Roadway project" means a project located in the public right-of-way, that involves the creation of a new or replacement of an existing roadway, or that involves the creation of new or replacement of existing impervious surface.

"Runoff" means the portion of rainfall or other precipitation that becomes surface flow and interflow.

(Ord. 123105, § 2, 2009.)

22.801.200 - "S"

"SPU" means Seattle Public Utilities.

"Sanitary sewer" means a system that conveys wastewater and is not designed to convey stormwater.

"SDOT" means the Seattle Department of Transportation.

"Service drain" means "service drain" as defined in Section 21.16.030.

"Side sewer" means "side sewer" as defined in Section 21.16.030.

"Sidewalk" means "sidewalk" as defined in Section 23.84A.036.

"Sidewalk project" means a project that exclusively involves the creation of a new or replacement of an existing sidewalk, including any associated planting strip, curb, or gutter.

"Single-family residential project" means a project, that constructs one Single-family Dwelling Unit per Section 23.44.006.A located in land classified as being Single-family Residential 9,600 (SF 9600), Single-family Residential 7,200 (SF 7200), or Single-family Residential 5,000 (SF 5000) per Section 23.30.010, and the total new plus replaced impervious surface is less than 10,000 square feet and the total new plus replaced pollution-generating impervious surface is less than 5,000 square feet.

"Site" means the lot or parcel, or portion of street, highway or other right-of-way, or contiguous combination thereof, where a permit for the addition or replacement of impervious surface or the undertaking of land disturbing activity has been issued or where any such work is proposed or performed. For roadway projects, the length of the project site and the right-of-way boundaries define the site.

"Slope" means an inclined ground surface.

"Small project" means a project with:

1. Less than 5,000 square feet of new and replaced impervious surface; and
2. Less than one acre of land disturbing activities.

"SMC" means the Seattle Municipal Code.

"Soil" means naturally deposited non-rock earth materials.

"Solid waste" means "solid waste" as defined in Section 21.36.016.

"Source controls" mean structures or operations that prevent contaminants from coming in contact with drainage water through physical separation or careful management of activities that are known sources of pollution.

"Standard design" is a design pre-approved by the Director for drainage and erosion control available for use at a site with pre-defined characteristics.

"Storm drain" means both public storm drain and service drain.

"Stormwater" means that portion of precipitation and snowmelt that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes and other features of a drainage system into a receiving water or a constructed infiltration facility.

"Stream" means a Type 2-5 water as defined in WAC 222-16-031. Used synonymously with "creek."

(Ord. 123105, § 2, 2009.)

22.801.210 - "T"

"Topsoil" means the weathered surface soil, including the organic layer, in which plants have most of their roots.

"Trail" means a path of travel for recreation and/or transportation within a park, natural environment, or corridor that is not classified as a highway, road, or street.

"Trail project" means a project that exclusively involves creating a new or replacement of an existing trail, and which does not contain pollution-generating impervious surfaces.

"Treatment facility" means a drainage control facility designed to remove pollutants from drainage water.

(Ord. 123105, § 2, 2009.)

22.801.220 - "U"

"Uncontaminated" means surface water or groundwater not containing sediment or other pollutants or contaminants above natural background levels and not containing pollutants or contaminants in levels greater than City-supplied drinking water when referring to potable water.

(Ord. 123105, § 2, 2009.)

22.801.230 - "V"

"Vegetation" means "vegetation" as defined in Section 25.09.520.

(Ord. 123105, § 2, 2009.)

22.801.240 - "W"

"Wastewater" means "wastewater" as defined in Section 21.16.030.

"Water Quality Standards" means Surface Water Quality Standards, Chapter 173-201A WAC, Ground Water Quality Standards, Chapter 173-200 WAC, and Sediment Management Standards, Chapter 173-204 WAC.

"Watercourse" means the route, constructed or formed by humans or by natural processes, generally consisting of a channel with bed, banks or sides, in which surface waters flow. Watercourse includes small lakes, bogs, streams, creeks, and intermittent artificial components (including ditches and culverts) but does not include designated receiving waters.

"Watershed" means a geographic region within which water drains into a particular river, stream, or other body of water.

"Wetland" means a wetland designated under Section 25.09.020.

"Wetland function" means the physical, biological, chemical, and geologic interactions among different components of the environment that occur within a wetland. Wetland functions can be grouped into three categories: functions that improve water quality; functions that change the water regime in a watershed, such as flood storage; and functions that provide habitat for plants and animals.

"Wetland values" means wetland processes, characteristics, or attributes that are considered to benefit society.

(Ord. 123105, § 2, 2009.)

Chapter 22.802 - PROHIBITED AND PERMISSIBLE DISCHARGES  
Sections:

22.802.010 - General

- A. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- B. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 2, 2009.)

22.802.020 - Prohibited Discharges

- A. Prohibited Discharges. The following common substances are prohibited to enter, either directly or indirectly, a public drainage system, a private drainage system, or a receiving water within or contiguous to Seattle city limits, including but not limited to when entering via a service drain, overland flow, or as a result of a spill or deliberate dumping:
  - 1. acids;
  - 2. alkalis including cement wash water;
  - 3. ammonia;
  - 4. animal carcasses;
  - 5. antifreeze, oil, gasoline, grease and all other automotive and petroleum products;
  - 6. chemicals not normally found in uncontaminated water;
  - 7. chlorinated swimming pool or hot tub water;
  - 8. chlorine;
  - 9. commercial and household cleaning materials;
  - 10. detergent;
  - 11. dirt;
  - 12. domestic or sanitary sewage;
  - 13. drain cleaners;
  - 14. fertilizers;
  - 15. flammable or explosive materials;
  - 16. food and food waste;
  - 17. gravel.
  - 18. herbicides;
  - 19. human and animal waste;
  - 20. industrial process wastewater,
  - 21. ink;
  - 22. laundry waste;
  - 23. metals in excess of naturally occurring amounts, whether in liquid or solid form;

24. painting products;
  25. pesticides;
  26. sand;
  27. soap;
  28. solid waste;
  29. solvents and degreasers;
  30. steam-cleaning waste; and,
  31. yard waste.
- B. Prohibited Discharges to Public and Private Drainage System. Except as provided in Section 22.802.030, any discharge to a public drainage system or to a private drainage system that is not composed entirely of stormwater is prohibited.
- C. Prohibited Discharges to Receiving Waters. Except as provided in Section 22.802.030, any discharge, either directly or indirectly to receiving waters within or contiguous to Seattle city limits or to a public drainage system that is not composed entirely of stormwater is prohibited.

(Ord. 123105, § 2, 2009.)

#### 22.802.030 - Permissible Discharges

Permissible Discharges to Drainage Systems and Receiving Waters. Discharges from the sources listed below are permissible discharges unless the Director of SPU determines that the type of discharge, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, whether singly or in combination with others, is causing or contributing to a violation of the City's NPDES stormwater permit or is causing or contributing to a water quality problem:

1. Discharges from potable water sources, including flushing of potable water lines, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the drainage system;
2. Discharges from washing or rinsing of potable water storage reservoirs, dechlorinated as above;
3. Discharges from surface waters, including diverted stream flows;
4. Discharges of uncontaminated groundwater, including uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(2), uncontaminated pumped groundwater, and rising ground waters;
5. Discharges of air conditioning condensation;
6. Discharges from springs;
7. Discharges of uncontaminated water from crawl space pumps;
8. Discharges from lawn watering;
9. Discharges from irrigation runoff, including irrigation water from agricultural sources that is commingled with stormwater and that does not contain prohibited substances;
10. Discharges from riparian habitats and wetlands;
11. Discharges from approved footing drains and other subsurface drains or, where approval is not required, installed in compliance with this subtitle and rules promulgated pursuant to this subtitle;
12. Discharges from foundation drains;

13. Discharges from swimming pools, hot tubs, fountains, or similar aquatic recreation facilities and constructed water features, provided the discharges have been de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the drainage control system;
  14. Discharges of street and sidewalk wash-water that does not use detergents or chemical additives;
  15. Discharges of water used to control dust;
  16. Discharges of water from routine external building washdown that does not use detergents or chemical additives;
  17. Discharges that are in compliance with a separate individual or general NPDES permit;
  18. Discharges that are from emergency fire fighting activities; and
  19. Other non-stormwater discharges, provided these discharges are in compliance with the requirements of an approved stormwater pollution prevention plan that addresses such discharges.
- B. Permissible Discharges to Sanitary Sewers. In consultation with the local sewage treatment agency, the Director of SPU may approve discharges of drainage water to a sanitary sewer if the discharging party demonstrates to the satisfaction of the Director of SPU that other methods of controlling pollutants in the discharge are not adequate or reasonable, the discharging party certifies that the discharge will not harm the environment, and the discharging party certifies that the discharge will not overburden or otherwise harm the sanitary sewer. Connections to the sanitary sewer shall be made in accordance with Chapter 21.16 (Side Sewer Code). The Director of SPU shall condition approval of such a discharge on compliance with local pretreatment regulations and on maintaining compliance with the required certifications given by the discharging party.
- C. Permissible Discharges to Public Combined Sewers. In consultation with the local sewage treatment agency, the Director of SPU may approve discharges of drainage water to a public combined sewer if the discharging party certifies that the discharge will not harm the environment, and the discharging party certifies that the discharge will not overburden or otherwise harm the public combined sewers. Connections to the public combined sewers shall be made in accordance with Chapter 21.16 (Side Sewer Code). The Director of SPU shall condition approval of such a discharge on compliance with local pretreatment regulations and on maintaining compliance with the required certifications given by the discharging party.

(Ord. 123105, § 2, 2009.)

#### 22.802.040 - Testing for Prohibited Discharges

When the Director of SPU has reason to believe that any discharge is a prohibited discharge, the Director of SPU may sample and analyze the discharge and recover the costs from a responsible party in an enforcement proceeding. When the discharge is likely to be a prohibited discharge on a recurring basis, the Director of SPU may conduct, or may require the responsible party to conduct, ongoing monitoring at the responsible party's expense.

(Ord. 123105, § 2, 2009.)

#### Chapter 22.803 - MINIMUM REQUIREMENTS FOR ALL DISCHARGES AND ALL REAL PROPERTY Sections:

##### 22.803.010 - General

- A. All responsible parties are required to comply with this chapter, even where no development is occurring.

- B. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- C. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.803.020 - Minimum Requirements for All Discharges and Real Property

- A. Requirement to provide documentation. The owner is required to make plans, procedures, and schedules required by this subsection available to the Director of SPU when requested.
- B. Requirement to report spills, releases, or dumping. A responsible party is required to, at the earliest possible time, but in any case within 24 hours of discovery, report to the Director of SPU, a spill, release, dumping, or other situation that has contributed or is likely to contribute pollutants to a public drainage system, a private drainage system, or a receiving water. This reporting requirement is in addition to, and not instead of, any other reporting requirements under federal, state or local laws.
- C. Requirements to maintain facilities. All treatment facilities, flow control facilities, drainage control facilities, and drainage systems shall be maintained as prescribed in rules promulgated by the Director in order for these facilities and systems to be kept in continuous working order.
- D. Requirements for disposal of waste from maintenance activities. Disposal of waste from maintenance of drainage control facilities shall be conducted in accordance with federal, state and local regulations, including the Minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC, guidelines for disposal of waste materials, and, where appropriate, Dangerous Waste Regulations, Chapter 173-303 WAC.
- E. Requirements to maintain records of installation and maintenance activities. When a drainage control facility is installed, the party having the facility installed shall make records of the installation and shall identify the party (or parties) responsible for maintenance and operations. The parties shall retain a continuous record of all maintenance and repair activities, and shall retain the records for at least ten years. If a transfer of ownership occurs, these records of installation, repair, and maintenance shall be transferred to the new property owner. These records shall be made available to the Director of SPU during inspection of the facility and at other reasonable times upon request of the Director of SPU.

(Ord. 123105, § 3, 2009.)

22.803.030 - Minimum Requirements for Source Controls for All Real Property

For all discharges, responsible parties shall implement and maintain source controls to prevent or minimize pollutants from leaving a site or property. Source controls that are required for all real property include, but are not limited to, the following, as further described in rules promulgated by the Director:

- A. Eliminate Illicit or Prohibited Connections to Storm Drains. It is the responsibility of the property owner to ensure that all plumbing connections are properly made and that only connections conveying stormwater or permissible discharges per Section 22.802.030 are connected to the drainage system.
- B. Perform Routine Maintenance for Stormwater Drainage System. All drainage system components, including, but not limited to catch basins, flow control facilities, treatment facilities, green stormwater infrastructure, and unimproved drainage pathways shall be kept in continuously working order.

- C. Dispose of Fluids and Wastes Properly. Solid and liquid wastes must be disposed of in a manner that minimizes the risk of contaminating stormwater.
- D. Proper Storage of Solid Wastes. Solid wastes must be stored of in a manner that minimizes the risk of contaminating stormwater.
- E. Spill Prevention and Cleanup. All property owners having the potential to spill pollutants shall take measures to the maximum extent feasible to prevent spills of pollutant and to properly clean up spills that may occur.
- F. Provide Oversight and Training for Staff. Train at least annually all employees responsible for the operation, maintenance, or inspection of BMPs.

(Ord. 123105, § 3, 2009.)

22.803.040 - Minimum Requirements for Source Controls For All Businesses and Public Entities

- A. Source controls shall be implemented, to the extent allowed by law, by all businesses and public entities for specific pollution-generating activities as specified in the joint SPU/DPD Directors' Rule, "Source Control Technical Requirements Manual," to the extent necessary to prevent prohibited discharges as described in subsection 22.802.020.A through subsection 22.802.020.C, and to prevent contaminants from coming in contact with drainage water. Source controls include, but are not limited to, segregating or isolating wastes to prevent contact with drainage water; enclosing, covering, or containing the activity to prevent contact with drainage water; developing and implementing inspection and maintenance programs; sweeping; and taking management actions such as training employees on pollution prevention.
- B. Spill prevention shall be required for all businesses and public entities, as further defined in rules promulgated by the Director:
  - 1. Develop and implement plans and procedures to prevent spills and other accidental releases of materials that may contaminate drainage water. This requirement may be satisfied by a Stormwater Pollution Prevention Plan prepared in compliance with an NPDES industrial stormwater permit for the site; and
  - 2. Implement procedures for immediate containment and other appropriate action regarding spills and other accidental releases to prevent contamination of drainage water; and
  - 3. Provide necessary containment and response equipment on-site, and training of personnel regarding the procedures and equipment to be used.

(Ord. 123105, § 3, 2009.)

Chapter 22.805 - MINIMUM REQUIREMENTS FOR ALL PROJECTS

Sections:

22.805.010 - General

- A. All projects are required to comply with this chapter, even where drainage control review is not required.
- B. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- C. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits,



cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.805.020 - Minimum requirements for all projects

- A. Minimum Requirements for Maintaining Natural Drainage Patterns. For all projects, natural drainage patterns shall be maintained and discharges shall occur at the natural location to the maximum extent feasible and consistent with subsection 22.805.020.B. Drainage water discharged from the site shall not cause a significant adverse impact to receiving waters or down-gradient properties. Drainage water retained on the site shall not cause significant adverse impact to up-gradient properties.
- B. Minimum Requirements for Discharge Point. The discharge point for drainage water from each site shall be selected using criteria that shall include, but not be limited to, preservation of natural drainage patterns and whether the capacity of the drainage system is adequate for the flow rate and volume. For those projects meeting the drainage review threshold, the proposed discharge point shall be identified in the drainage control plan required by this subtitle, for review and approval or disapproval by the Director.
- C. Minimum Requirements for Flood-prone Areas. On sites within flood prone areas, responsible parties are required to employ procedures to minimize the potential for flooding on the site and to minimize the potential for the project to increase the risk of floods on adjacent or nearby properties. Flood control measures shall include those set forth in other titles of the Seattle Municipal Code and rules promulgated thereunder, including, but not limited to, Chapter 23.60 (Shoreline Master Program), Chapter 25.06 (Floodplain Development) and Chapter 25.09 (Environmentally Critical Areas) of the Seattle Municipal Code.
- D. Minimum Requirements for Construction Site Stormwater Pollution Prevention Control. Temporary and permanent construction controls shall be used to accomplish the following minimum requirements. All projects are required to meet each of the elements below or document why an element is not applicable. Additional controls may be required by the Director when minimum controls are not sufficient to prevent erosion or transport of sediment or other pollutants from the site.
  1. Mark Clearing Limits and Environmentally Critical Areas. Within the boundaries of the project site and prior to beginning land disturbing activities, including clearing and grading, clearly mark all clearing limits, easements, setbacks, all environmentally critical areas and their buffers, and all trees, and drainage courses that are to be preserved within the construction area.
  2. Retain Top Layer. Within the boundaries of the project site, the duff layer, topsoil, and native vegetation, if there is any, shall be retained in an undisturbed state to the maximum extent feasible. If it is not feasible to retain the top layer in place, it should be stockpiled on-site, covered to prevent erosion, and replaced immediately upon completion of the ground disturbing activities to the maximum extent feasible.
  3. Establish Construction Access. Limit construction vehicle access, whenever possible, to one route. Stabilize access points and minimize tracking sediment onto public roads. Promptly remove any sediment tracked off site.
  4. Protect Downstream Properties and Receiving Waters. Protect properties and receiving waters downstream from the development sites from erosion due to increases in the volume, velocity, and peak flow rate of drainage water from the project site. If it is necessary to construct flow control facilities to meet this requirement, these facilities shall be functioning prior to implementation of other land disturbing activity. If permanent infiltration ponds are used to control flows during construction, these facilities shall be protected from siltation during the construction phase of the project.
  5. Prevent Erosion and Sediment Transport from the Site. Pass all drainage water from disturbed areas through a sediment trap, sediment pond, or other appropriate sediment removal BMP

before leaving the site or prior to discharge to an infiltration facility. Sediment controls intended to trap sediment on site shall be constructed as one of the first steps in grading and shall be functional before other land disturbing activities take place. BMPs intended to trap sedimentation shall be located in a manner to avoid interference with the movement of juvenile salmonids attempting to enter off-channel areas or drainages.

6. Prevent Erosion and Sediment Transport from the Site by Vehicles. Whenever construction vehicle access routes intersect paved roads, the transport of sediment onto the paved road shall be minimized. If sediment is transported onto a paved road surface, the roads shall be cleaned thoroughly at the end of each day. Sediment shall be removed from paved roads by shoveling or sweeping and shall be transported to a controlled sediment disposal area. If sediment is tracked off site, roads shall be cleaned thoroughly at the end of each day, or at least twice daily during wet weather. Street washing is allowed only after sediment is removed and street wash wastewater shall be prevented from entering the public drainage system and receiving waters.
7. Stabilize Soils. Prevent on-site erosion by stabilizing all exposed and unworked soils, including stock piles and earthen structures such as dams, dikes, and diversions. From October 1 to April 30, no soils shall remain exposed and unworked for more than two days. From May 1 to September 30, no soils shall remain exposed for more than seven days. Soils shall be stabilized at the end of the shift before a holiday or weekend if needed based on the weather forecast. Soil stockpiles shall be stabilized from erosion, protected with sediment trapping measures, and be located away from storm drain inlets, waterways, and drainage channels. Before the completion of the project, permanently stabilize all exposed soils that have been disturbed during construction.
8. Protect Slopes. Erosion from slopes shall be minimized. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Off-site stormwater run-on or groundwater shall be diverted away from slopes and undisturbed areas with interceptor dikes, pipes, and/or swales. Pipe slope drains or protected channels shall be constructed at the top of slopes to collect drainage and prevent erosion. Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations. Check dams shall be placed at regular intervals within constructed channels that are cut down a slope.
9. Protect Storm Drains. Prevent sediment from entering all storm drains, including ditches that receive drainage water from the project. Storm drain inlets protection devices shall be cleaned or removed and replaced as recommended by the product manufacturer, or more frequently if required to prevent failure of the device or flooding. Storm drain inlets made operable during construction shall be protected so that drainage water does not enter the drainage system without first being filtered or treated to remove sediments. Storm drain inlet protection devices shall be removed at the conclusion of the project. When manufactured storm drain inlet protection devices are not feasible, inlets and catch basins must be cleaned as necessary to prevent sediment from entering the drainage control system.
10. Stabilize Channels and Outlets. All temporary on-site drainage systems shall be designed, constructed, and stabilized to prevent erosion. Stabilization shall be provided at the outlets of all drainage systems that is adequate to prevent erosion of outlets, adjacent stream banks, slopes, and downstream reaches.
11. Control Pollutants. Measures shall be taken to control potential pollutants that include, but are not limited to, the following measures:
  - a. All pollutants, including sediment, waste materials, and demolition debris, that occur onsite shall be handled and disposed of in a manner that does not cause contamination of drainage water and per all applicable disposal laws.
  - b. Containment, cover, and protection from vandalism shall be provided for all chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment.

- c. On-site fueling tanks shall include secondary containment.
  - d. Maintenance, fueling, and repair of heavy equipment and vehicles involving oil changes, hydraulic system drain down, solvent and de-greasing cleaning operations, fuel tank drain down and removal, and other activities which may result in discharge or spillage of pollutants to the ground or into drainage water runoff shall be conducted using spill prevention and control measures.
  - e. Contaminated surfaces shall be cleaned immediately following any discharge or spill incident.
  - f. Wheel wash or tire bath wastewater shall be discharged to a separate on-site treatment system or to the sanitary sewer or combined sewer system with approval of the Director of SPU. Temporary discharges or connections to the public sanitary and combined sewers shall be made in accordance with Chapter 21.16 (Side Sewer Code).
  - g. Application of fertilizers and pesticides shall be conducted in a manner and at application rates that will not result in loss of chemical to drainage water. Manufacturers' label requirements for application rates and procedures shall be followed.
  - h. BMPs shall be used to prevent or treat contamination of drainage water by pH-modifying sources. These sources include, but are not limited to, bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, and concrete pumping and mixer washout waters. Construction site operators may be required to adjust the pH of drainage water if necessary to prevent a violation of water quality standards. Construction site operators must obtain written approval from Ecology prior to using chemical treatment other than carbon dioxide (CO<sub>2</sub>) or dry ice to adjust pH.
12. Control Dewatering. When dewatering devices discharge on site or to a public drainage system, dewatering devices shall discharge into a sediment trap, sediment pond, gently sloping vegetated area of sufficient length to remove sediment contamination, or other sediment removal BMP. Foundation, vault, and trench dewatering waters must be discharged into a controlled drainage system prior to discharge to a sediment trap or sediment pond. Clean, non-turbid dewatering water, such as well-point ground water, that is discharged to systems tributary to state surface waters must not cause erosion or flooding. Highly turbid or contaminated dewatering water shall be handled separately from drainage water. For any project with an excavation depth of 12 feet or more below the existing grade and for all large projects, dewatering flows must be determined and it must be verified that there is sufficient capacity in the public drainage system and public combined sewer prior to discharging.
13. Maintain BMPs. All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function. All temporary erosion and sediment controls shall be removed within five days after final site stabilization is achieved or after the temporary controls are no longer needed, whichever is later. Trapped sediment shall be removed or stabilized on site. Disturbed soil areas resulting from removal shall be permanently stabilized.
14. Inspect BMPs. BMPs shall be periodically inspected. For projects with 5,000 square feet or more of new plus replaced impervious surface or 7,000 square feet or more of land disturbing activity, site inspections shall be conducted by a Certified Erosion and Sediment Control Lead who shall be identified in the Construction Stormwater Control Plan and shall be present on-site or on-call at all times.
15. Execute Construction Stormwater Control Plan. Construction site operators shall maintain, update, and implement their Construction Stormwater Control Plan. Construction site operators shall modify their Construction Stormwater Control Plan to maintain compliance whenever there is a change in design, construction, operation, or maintenance at the site that has, or could have, a significant effect on the discharge of pollutants to waters of the state.

16. Minimize Open Trenches. In the construction of underground utility lines, where feasible, no more than 150 feet of trench shall be opened at one time, unless soil is replaced within the same working day, and where consistent with safety and space considerations, excavated material shall be placed on the uphill side of trenches. Trench dewatering devices shall discharge into a sediment trap or sediment pond.
  17. Phase the Project. Development projects shall be phased to the maximum extent feasible in order to minimize the amount of land disturbing activity occurring at the same time and shall take into account seasonal work limitations.
  18. Install Permanent Flow Control and Water Quality Facilities. Development projects required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment) shall install permanent flow control and water quality facilities.
- E. Minimum Requirement to Amend Soils. Prior to completion of the project all new, replaced, and disturbed topsoil shall be amended with organic matter per rules promulgated by the Director to improve onsite management of drainage water flow and water quality.
  - F. Implement Green Stormwater Infrastructure. All Single-family residential projects and all other projects with 7,000 square feet or more of land disturbing activity or 2,000 square feet or more of new plus replaced impervious surface must implement green stormwater infrastructure to infiltrate, disperse, and retain drainage water onsite to the maximum extent feasible without causing flooding, landslide, or erosion impacts.
  - G. Protect Wetlands. All projects discharging into a wetland or its buffer, either directly or indirectly through a drainage system, shall prevent impacts to wetlands that would result in a net loss of functions or values.
  - H. Protect Streams and Creeks. All projects, including projects discharging directly to a stream or creek, or to a drainage system that discharges to a stream or creek, shall maintain the water quality in any affected stream or creek by selecting, designing, installing, and maintaining temporary and permanent controls.
  - I. Protect Shorelines. All projects discharging directly or indirectly through a drainage system into the Shoreline District as defined in Chapter 23.60A shall prevent impacts to water quality and stormwater quantity that would result in a net loss of shoreline ecological functions as defined in WAC 173-26-020 (11).
  - J. Ensure Sufficient Capacity. All large projects, all projects with an excavation depth of 12 feet or more below the existing grade, and all projects with an excavation depth of less than 12 feet located in an area expected to have shallow groundwater depths shall ensure that sufficient capacity exists in the public drainage system and public combined sewer to carry existing and anticipated loads, including any flows from dewatering activities. Capacity analysis shall extend to at least ¼-mile from the discharge point of the site. Sites at which there is insufficient capacity may be required to install a flow control facility or improve the drainage system or public combined sewer to accommodate flow from the site. Unless approved otherwise by the Director as necessary to meet the purposes of this subtitle:
    1. Capacity analysis for discharges to the public drainage system shall be based on peak flows with a 4% annual probability (25-year recurrence interval); and
    2. Capacity analysis for discharges to the public combined sewer shall be based on peak flows with a 20% annual probability (5-year recurrence interval).
  - K. Install Source Control BMPs. Source control BMPs shall be installed for specific pollution-generating activities as specified in the joint SPU/DPD Directors' Rule, "Source Control Technical Requirements Manual," to the extent necessary to prevent prohibited discharges as described in Section 22.802.020, and to prevent contaminants from coming in contact with drainage water. This requirement applies to the pollution-generating activities that are stationary or occur in one primary

location and to the portion of the site being developed. Examples of installed source controls include, but are not limited to, the following:

1. A roof, awning, or cover erected over the pollution-generating activity area;
  2. Ground surface treatment in the pollution-generating activity area to prevent interaction with, or breakdown of, materials used in conjunction with the pollution-generating activity;
  3. Containment of drainage from the pollution-generating activity to a closed sump or tank. Contents of such a sump or tank must be pumped or hauled by a waste handler, or treated prior to discharge to a public drainage system.
  4. Construct a berm or dike to enclose or contain the pollution-generating activities;
  5. Direct drainage from containment area of pollution-generating activity to a closed sump or tank for settling and appropriate disposal, or treat prior to discharging to a public drainage system;
  6. Pave, treat, or cover the containment area of pollution-generating activities with materials that will not interact with or break down in the presence of other materials used in conjunction with the pollution-generating activity; and
  7. Prevent precipitation from flowing or being blown onto containment areas of pollution-generating activities.
- L. Do not obstruct watercourses. Watercourses shall not be obstructed.
- M. Comply with Side Sewer Code.
1. All privately owned and operated drainage control facilities or systems, whether or not they discharge to a public drainage system, shall be considered side sewers and subject to Chapter 21.16 (Side Sewer Code), SPU Director's Rules promulgated under Title 21, and the design and installation specifications and permit requirements of SPU and DPD for side sewer and drainage systems.
  2. Side sewer permits and inspections shall be required for constructing, capping, altering, or repairing privately owned and operated drainage systems as provided for in Chapter 21.16. When the work is ready for inspection, the permittee shall notify the Director of DPD. If the work is not constructed according to the plans approved under this subtitle, Chapter 21.16, the SPU Director's Rules promulgated under Title 21, and SPU and DPD design and installation specifications, then SPU, after consulting with DPD, may issue a stop work order under Chapter 22.808 and require modifications as provided for in this subtitle and Chapter 21.16.

(Ord. [124105](#), § 7, 2013; Ord. 123105, § 3, 2009.)

#### 22.805.030 - Minimum Requirements for Single-Family Residential Projects

All single-family residential projects shall implement green stormwater infrastructure to the maximum extent feasible.

(Ord. 123105, § 3, 2009.)

#### 22.805.040 - Minimum Requirements for Trail and Sidewalk Projects

All trail and sidewalk projects with 2,000 square feet or more of new plus replaced impervious surface or 7,000 square feet or more of land disturbing activity shall implement green stormwater infrastructure to the maximum extent feasible.

(Ord. 123105, § 3, 2009.)

#### 22.805.050 - Minimum Requirements for Parcel-Based Projects

- A. Flow Control. Parcel-based projects shall meet the minimum requirements for flow control contained in Section 22.805.080, to the extent allowed by law, as prescribed below.

1. Discharges to Wetlands. Parcel-based projects discharging into a wetland shall comply with subsection 22.805.080.B.1 (Wetland Protection Standard) if:
  - a. The total new plus replaced impervious surface is 5,000 square feet or more; or
  - b. The project converts  $\frac{3}{4}$ -acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
  - c. The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site.
2. Discharges to Listed Creek Basins. Parcel-based projects discharging into Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek shall:
  - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing impervious coverage is less than 35 percent and one or more of the following apply:
    - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
    - 2) The project converts  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
    - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
    - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
  - b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.050.A.2.a do not apply and the total new plus replaced impervious surface is 2,000 square feet or more.
3. Discharges to Non-listed Creek Basins. Parcel-based projects discharging into a creek not listed in subsection 22.805.050.A.2 shall:
  - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing land cover is forested and one or more of the following apply:
    - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
    - 2) The project converts  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
    - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
    - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.

- b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.050.A.3.a do not apply and the total new plus replaced impervious surface is 2,000 square feet or more.
  - 4. Discharges to Small Lake Basins. Parcel-based projects discharging into Bitter Lake, Green Lake, or Haller Lake drainage basins shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 2,000 square feet or more.
  - 5. Discharges to Public Combined Sewer. Unless the Director of SPU has exercised its discretion to determine and has determined that the public combined sewer has sufficient capacity to carry existing and anticipated loads, parcel-based projects discharging into the public combined sewer shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
  - 6. Discharges to a Capacity-constrained System. In addition to applicable minimum requirements for flow control in subsection 22.805.050.A.1 through subsection 22.805.050.A.5, parcel-based projects discharging into a capacity-constrained system shall also comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 2,000 square feet or more.
- B. Treatment. Parcel-based projects not discharging to the public combined sewer shall comply with the minimum requirements for treatment contained in Section 22.805.090, to the extent allowed by law, if:
- 1. The total new plus replaced pollution-generating impervious surface is 5,000 square feet or more; or
  - 2. The total new plus replaced pollution-generating pervious surfaces is  $\frac{3}{4}$  of an acre or more and from which there is a surface discharge in a natural or man-made conveyance system from the site.

(Ord. [124758](#), § 2, 2015; Ord. 123105, § 3, 2009.)

#### 22.805.060 - Minimum Requirements for Roadway Projects

- A. Flow Control. Roadway projects shall meet the minimum requirements for flow control contained in Section 22.805.080, to the extent allowed by law, as prescribed below.
- 1. Discharges to Wetlands. Roadway projects discharging into a wetland shall comply with subsection 22.805.080.B.1 (Wetland Protection Standard) if:
    - a. The total new plus replaced impervious surface is 5,000 square feet or more; or
    - b. The project converts  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
    - c. The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site.
  - 2. Discharges to Listed Creek Basins. Roadway projects discharging into Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek shall:
    - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing impervious coverage is less than 35 percent and one or more of the following apply:
      - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or

- 2) The project converts  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
  - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
  - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
- b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.060.A.2.a do not apply and the total new plus replaced impervious surface is 10,000 square feet or more.
3. Discharges to Non-listed Creek Basins. Roadway projects discharging into a creek not listed in subsection 22.805.060.A.2 shall:
    - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing land cover is forested and one or more of the following apply:
      - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
      - 2) The project converts  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
      - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
      - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
    - b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.060.A.3.a do not apply and the total new plus replaced impervious surface is 10,000 square feet or more.
  4. Discharges to Small Lake Basins. Projects discharging into Bitter Lake, Green Lake, or Haller Lake drainage basins shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
  5. Discharges to Public Combined Sewer. Unless the Director of SPU has exercised its discretion to determine and has determined that the public combined sewer has sufficient capacity to carry existing and anticipated loads, roadway projects discharging into the public combined sewer shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
  6. Discharges to a Capacity-constrained System. In addition to applicable minimum requirements for flow control in subsection 22.805.060.A.1 through subsection 22.805.060.A.5, roadway projects discharging into a capacity-constrained system shall also comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
- B. Treatment. Roadway projects not discharging to the public combined sewer shall, to the extent allowed by law:



1. If the site has less than 35 percent existing impervious surface coverage, and the project's total new plus replaced pollution-generating impervious surface is 5,000 square feet or more, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating impervious surface; and
2. If the site has greater than or equal to 35 percent existing impervious surface coverage and the project's total new pollution-generating impervious surface is 5,000 square feet or more, and
  - a. If the new pollution-generating impervious surface adds 50 percent or more to the existing impervious surfaces within the project limits, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating impervious surface. The project limits are defined by the length of the project and the width of the right-of-way; or
  - b. If the new pollution-generating impervious surface adds less than 50 percent to the existing impervious surfaces within the project limits, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new pollution-generating impervious surface. The project limits are defined by the length of the project and the width of the right-of-way; and
3. If the total new plus replaced pollution-generating pervious surfaces is three-quarters of an acre or more and from which there is a surface discharge in a natural or man-made conveyance system from the site, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating pervious surface.

(Ord. [124758](#), § 3, 2015; Ord. 123105, § 3, 2009.)

#### 22.805.070 - Minimum Requirements for Joint Parcel-Based and Roadway Projects

The parcel-based portion of joint projects shall comply with the minimum requirements for parcel-based projects contained in Section 22.805.050. The roadway portion of joint projects shall comply with the minimum requirements roadway projects contained in Section 22.805.060. The boundary of the public right-of-way shall form the boundary between the parcel and roadway portions of the joint project for purposes of determining applicable thresholds.

(Ord. 123105, § 3, 2009.)

#### 22.805.080 - Minimum Requirements for Flow Control

- A. Applicability. The requirements of this subsection apply to the extent required in Section 22.805.050 to Section 22.805.070.
- B. Requirements. Flow control facilities shall be installed to the extent allowed by law and maintained per rules promulgated by the Director to receive flows from that portion of the site being developed. Post-development discharge determination must include flows from dewatering activities. All projects shall use green stormwater infrastructure to the maximum extent feasible to meet the minimum requirements. Flow control facilities that receive flows from less than that portion of the site being developed may be installed if the total new plus replaced impervious surface is less than 10,000 square feet, the project site uses only green stormwater infrastructure to meet the requirement, and the green stormwater infrastructure provides substantially equivalent environmental protection as facilities not using green stormwater infrastructure that receive flows from all of the portion of the site being developed.
  1. Wetland Protection Standard. All projects discharging to wetlands or their buffers shall protect the hydrologic conditions, vegetative community, and substrate characteristics of the wetlands and their buffers to protect the functions and values of the affected wetlands. The introduction of sediment, heat and other pollutants and contaminants into wetlands shall be minimized through the selection, design, installation, and maintenance of temporary and permanent controls. Discharges shall maintain existing flows to the extent necessary to protect the functions and values of the wetlands. Prior to authorizing new discharges to a wetland, alternative discharge

locations shall be evaluated and infiltration options outside the wetland shall be maximized unless doing so will adversely impact the functions and values of the affected wetlands. If one or more of the flow control requirements contained in 22.805.080.B.2 through 22.805.080.B.4 also apply to the project, an analysis shall be conducted to ensure that the functions and values of the affected wetland are protected before implementing these flow control requirements.

2. Pre-developed Forested Standard. The post-development discharge peak flow rates and flow durations must be matched to the pre-developed forested condition for the range of pre-developed discharge rates from 50% of the 2-year recurrence interval flow up to the 50-year recurrence interval flow.
  3. Pre-developed Pasture Standard. The post-development discharge peak flow rates and flow durations must be matched to the pre-developed pasture condition for the range of pre-developed discharge rates from 50% of the 2-year recurrence interval flow up to the 2-year recurrence interval flow.
  4. Peak Flow Control Standard. The post-development peak flow with a 4% annual probability (25-year recurrence flow) shall not exceed 0.4 cubic feet per second per acre. Additionally, the peak flow with a 50% annual probability (2-year recurrence flow) shall not exceed 0.15 cubic feet per second per acre.
- C. Inspection and Maintenance Schedule. Temporary and permanent flow control facilities shall be inspected and maintained according to rules promulgated by the Director to keep these facilities in continuous working order.

(Ord. 123105, § 3, 2009.)

#### 22.805.090 - Minimum Requirements for Treatment.

- A. Applicability. The requirements of this subsection apply to the extent required in Section 22.805.050 to Section 22.805.070.
- B. Requirements. Water quality treatment facilities shall be installed to the extent allowed by law and maintained per rules promulgated by the Director to treat flows from the pollution generating pervious and impervious surfaces on the site being developed. When stormwater flows from other areas, including non-pollution generating surfaces (e.g., roofs), dewatering activities, and offsite areas, cannot be separated or bypassed, treatment BMPs shall be designed for the entire area draining to the treatment facility. All projects shall use green stormwater infrastructure the maximum extent feasible to meet the minimum requirements.
  1. Runoff Volume. Stormwater treatment facilities shall be designed based on the stormwater runoff volume from the contributing area or a peak flow rate as follows:
    - a. The daily runoff volume at or below which 91 percent of the total runoff volume for the simulation period occurs, as determined using an approved continuous model. It is calculated as follows:
      - 1) Rank the daily runoff volumes from highest to lowest.
      - 2) Sum all the daily volumes and multiply by 0.09.
      - 3) Sequentially sum daily runoff volumes, starting with the highest value, until the total equals 9 percent of the total runoff volume. The last daily value added to the sum is defined as the water quality design volume.
    - b. Different design flow rates are required depending on whether a treatment facility will be located upstream or downstream of a detention facility:
      - 1) For facilities located upstream of detention or when detention is not required, the design flow rate is the flow rate at or below which 91 percent of the total runoff volume for the simulation period is treated, as determined using an approved continuous runoff model.

- 2) For facilities located downstream of detention, the design flow rate is the release rate from the detention facility that has a 50 percent annual probability of occurring in any given year (2-year recurrence interval), as determined using an approved continuous runoff model.
- c. Infiltration facilities designed for water quality treatment must infiltrate 91 percent of the total runoff volume as determined using an approved continuous runoff model. To prevent the onset of anaerobic conditions, an infiltration facility designed for water quality treatment purposes must be designed to drain the water quality design treatment volume (the 91st percentile, 24-hour volume) within 48 hours.
2. Basic Treatment. A basic treatment facility shall be required for all projects. The requirements of subsection 22.805.090 B3 (Oil Control Treatment), subsection 22.805.090 B4 (Phosphorus Treatment), subsection 22.805.090.B.5 (Enhanced Treatment) are in addition to this basic treatment requirement.
3. Oil Control Treatment. An oil control treatment facility shall be required for high-use sites, as defined in this subtitle.
4. Phosphorus Treatment. A phosphorus treatment facility shall be required for projects discharging into nutrient-critical receiving waters.
5. Enhanced Treatment. An enhanced treatment facility for reducing concentrations of dissolved metals shall be required for projects discharging to a fish-bearing stream or lake, and to waters or drainage systems that are tributary to fish-bearing streams, creeks, or lakes, if the project meets one of the following criteria:
  - a. For a parcel-based project, the total of new plus replaced pollution-generating impervious surface is 5,000 square feet or more, and the site is an industrial, commercial, or multi-family project.
  - b. For a roadway project, the project adds 5,000 square feet or more of pollution-generating impervious surface, and the site is either:
    - 1) A fully controlled or a partially controlled limited access highway with Annual Average Daily Traffic counts of 15,000 or more; or
    - 2) Any other road with an Annual Average Daily Traffic count of 7,500 or greater.
6. Discharges to Groundwater. Direct discharge of untreated drainage water from pollution-generating impervious surfaces to ground water is prohibited.
- C. Inspection and Maintenance Schedule. Temporary and permanent treatment facilities shall be inspected and maintained according to rules promulgated by the Director to keep these facilities to be kept in continuous working order.

(Ord. 123105, § 3, 2009.)

#### Chapter 22.807 - DRAINAGE CONTROL REVIEW AND APPLICATION REQUIREMENTS

##### 22.807.010 - General

- A. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- B. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.807.020 - Drainage control review and application requirements

A. Thresholds for Drainage Control Review. Drainage control review and approval shall be required for any of the following:

1. Standard drainage control review and approval shall be required for the following:
  - a. Any land disturbing activity encompassing an area of seven hundred fifty (750) square feet or more;
  - b. Applications for either a master use permit or building permit that includes the cumulative addition of 750 square feet or more of land disturbing activity and/or new and replaced impervious surface;
  - c. Applications for which a grading permit or approval is required per SMC 22.170;
  - d. Applications for street use permits for the cumulative addition of 750 square feet or more of new and replaced impervious surface and land disturbing activity;
  - e. City public works projects or construction contracts, including contracts for day labor and other public works purchasing agreements, for the cumulative addition of 750 square feet or more of new and replaced impervious surface and/or land disturbing activity to the site, except for projects in a City-owned right-of-way and except for work performed for the operation and maintenance of park lands under the control or jurisdiction of the Department of Parks and Recreation; or
  - f. Permit approvals and contracts that include any new or replaced impervious surface or any land disturbing activity on a site deemed a potentially hazardous location, as specified in Section 22.800.050 (Potentially Hazardous Locations);
  - g. Permit approvals that include any new impervious surface in a Category I peat settlement-prone area delineated pursuant to subsection 25.09.020; or
  - h. Whenever an exception to a requirement set forth in this subtitle or in a rule promulgated under this subtitle is desired, whether or not review and approval would otherwise be required, including but not limited to, alteration of natural drainage patterns or the obstruction of watercourses.
2. Large project drainage control review and approval shall be required for projects that include:
  - a. Five thousand square feet or more of new plus replaced impervious surface;
  - b. One acre or more of land disturbing activity;
  - c. Conversion of  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped area;
  - d. Conversion of 2.5 acres or more of native vegetation to pasture.
3. The City may, by interagency agreement signed by the Directors of SPU and DPD, waive the drainage and erosion control permit and document requirements for property owned by public entities, when discharges for the property do not enter the public drainage system or the public combined sewer system.

B. Submittal Requirements for Drainage Control Review and Approval

1. Information Required for Standard Drainage Control Review. The following information shall be submitted to the Director for all projects for which drainage control review is required.
  - a. Standard Drainage Control Plan. A drainage control plan shall be submitted to the Director. Standard designs for drainage control facilities as set forth in rules promulgated by the Director may be used.
  - b. Construction Stormwater Control Plan. A construction stormwater control plan demonstrating controls sufficient to determine compliance with subsection 22.805.020.D

shall be submitted. The Director may approve a checklist in place of a plan, pursuant to rules promulgated by the Director.

- c. Memorandum of Drainage Control. The owner(s) of the site shall sign a "memorandum of drainage control" that has been prepared by the Director of SPU. Completion of the memorandum shall be a condition precedent to issuance of any permit or approval for which a drainage control plan is required. The applicant shall file the memorandum of drainage control with the King County Recorder's Office so as to become part of the King County real property records. The applicant shall give the Director of SPU proof of filing of the memorandum. The memorandum shall not be required when the drainage control facility will be owned and operated by the City. A memorandum of drainage control shall include:
  - 1) The legal description of the site;
  - 2) A summary of the terms of the drainage control plan, including any known limitations of the drainage control facilities, and an agreement by the owners to implement those terms;
  - 3) An agreement that the owner(s) shall inform future purchasers and other successors and assignees of the existence of the drainage control facilities and other elements of the drainage control plan, the limitations of the drainage control facilities, and of the requirements for continued inspection and maintenance of the drainage control facilities;
  - 4) The side sewer permit number and the date and name of the permit or approval for which the drainage control plan is required;
  - 5) Permission for the City to enter the property for inspection, monitoring, correction, and abatement purposes;
  - 6) An acknowledgment by the owner(s) that the City is not responsible for the adequacy or performance of the drainage control plan, and a waiver of any and all claims against the City for any harm, loss, or damage related to the plan, or to drainage or erosion on the property, except for claims arising from the City's sole negligence; and
  - 7) The owner(s)' signatures acknowledged by a notary public.
2. Information Required for Large Project Drainage Control Review. In addition to the submittal requirements for standard drainage control review, the following information is required for projects that include: one acre or more of land disturbing activities; 5,000 square feet or more of new and replaced impervious surface; conversion of  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped area; or conversion of 2.5 acres or more of native vegetation to pasture.
  - a. Comprehensive Drainage Control Plan. A comprehensive drainage control plan, in lieu of a standard drainage control plan, to comply with the requirements of this subtitle and rules promulgated hereunder and to accomplish the purposes of this subtitle shall be submitted with the permit application. It shall be prepared by a licensed civil engineer in accordance with standards adopted by the Director of DPD.
  - b. Inspection and Maintenance Schedule. A schedule shall be submitted that provides for inspection of temporary and permanent flow control facilities, treatment facilities, and source controls to comply with Section 22.805.080 (Minimum Requirements for Flow Control) and Section 22.805.090 (Minimum Requirements for Treatment).
  - c. Construction Stormwater Control Plan. A construction stormwater control plan prepared in accordance with subsection 22.805.020.D shall be submitted.
3. Applications for drainage control review and approval shall be prepared and submitted in accordance with provisions of this subsection, with Chapter 21.16 (Side Sewer Code) and with associated rules and regulations adopted jointly by the Directors of DPD and SPU.

4. The Director of DPD may require additional information necessary to adequately evaluate applications for compliance with the requirements and purposes of this subtitle and other laws and regulations, including but not limited to Chapter 25.09 (Regulations for Environmentally Critical Areas) and Chapter 23.60A. The Director of DPD may also require appropriate information about adjoining properties that may be related to, or affected by, the drainage control proposal in order to evaluate effects on the adjacent property. This additional information may be required as a precondition for permit application review and approval.
  5. Where an applicant simultaneously applies for more than one of the permits listed in subsection 22.807.020.A for the same property, the application shall comply with the requirements for the permit that is the most detailed and complete.
- C. Authority to Review. The Director may approve those plans that comply with the provisions of this subtitle and rules promulgated hereunder, and may place conditions upon the approval in order to assure compliance with the provisions of this subtitle. Submission of the required drainage control application information shall be a condition precedent to the processing of any of the above-listed permits. Approval of drainage control shall be a condition precedent to issuance of any of the above-listed permits. The Director may review and inspect activities subject to this subtitle and may require compliance regardless of whether review or approval is specifically required by this subsection. The Director may disapprove plans that do not comply with the provisions of this subtitle and rules promulgated hereunder. Disapproved plans shall be returned to the applicant, who may correct and resubmit the plans.

(Ord. [124105](#), § 8, 2013; Ord. 123105, § 3, 2009.)

#### 22.807.090 - Maintenance and Inspection

- A. Responsibility for Maintenance and Inspection. The owner and other responsible party shall maintain drainage control facilities, source controls, and other facilities required by this subtitle and by rules adopted hereunder to keep these facilities in continuous working order. The owner and other responsible party shall inspect permanent drainage control facilities temporary drainage control facilities, and other temporary best management practices or facilities on a schedule consistent with this subtitle and sufficient for the facilities to function at design capacity. The Director may require the responsible party to conduct more frequent inspections and/or maintenance when necessary to ensure functioning at design capacity. The owner(s) shall inform future purchasers and other successors and assignees to the property of the existence of the drainage control facilities and the elements of the drainage control plan, the limitations of the drainage control facilities, and the requirements for continued inspection and maintenance of the drainage control facilities.
- B. Inspection by City. The Director of SPU may establish inspection programs to evaluate and, when required, enforce compliance with the requirements of this subtitle and accomplishment of its purposes. Inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the City's NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other best management practices.
- C. Entry for Inspection and Abatement Purposes.
  1. New Installations and Connections. When any new drainage control facility is installed on private property, and when any new connection is made between private property and a public drainage system, sanitary sewer or combined sewer, the property owner shall grant, per subsection 22.807.020.B.1.c (Memorandum of Drainage Control), the City the right to enter the

property at reasonable times and in a reasonable manner pursuant to an inspection program established pursuant subsection 22.807.090.B, and to enter the property when the City has a reasonable basis to believe that a violation of this subtitle is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this subtitle.

2. Existing Real Property and Discharges. Owners of property with existing discharges or land uses subject to this subtitle who are not installing a new drainage control facility or making a new connection between private property and a public drainage system, sanitary sewer or combined sewer, shall have the option to execute a permission form for the purposes described above when provided with the form by the Director of SPU.

(Ord. 123105, § 3, 2009.)

## Chapter 22.808 - STORMWATER CODE ENFORCEMENT

### 22.808.010 - Violations

#### A. Civil Violations.

1. The following are civil violations of this subtitle, subject to a maximum civil penalty of up to \$5,000 per day for each violation.
  - a. General. It is a violation to not comply with any requirement of, or to act in a manner prohibited by, this subtitle, or a permit, approval, rule, manual, order, or Notice of Violation issued pursuant to this subtitle;
  - b. Aiding and Abetting. It is a violation to aid, abet, counsel, encourage, commend, incite, induce, hire or otherwise procure another person to violate this subtitle;
  - c. Alteration of Existing Drainage. It is a violation to alter existing drainage patterns which serve a tributary area of more than one acre without authorization or approval by the Director;
  - d. Obstruction of Watercourse. It is a violation to obstruct a watercourse without authorization or approval by the Director;
  - e. Dangerous Condition. It is a violation to allow to exist, or cause or contribute to, a condition of a drainage control facility, or condition related to grading, drainage water, drainage or erosion that is likely to endanger the public health, safety or welfare, the environment, or public or private property;
  - f. Interference. It is a violation for any person to interfere with or impede the correction of any violation, or compliance with any Notice of Violation, emergency order, stop work order, or the abatement of any nuisance;
  - g. Piecemeal of Projects. It is a violation for any person to knowingly divide a large project into a set of smaller projects specifically for the purpose of avoiding minimum requirements;
  - h. Altering a Posted Order. It is a violation for any person to remove, obscure, or mutilate any posted order of the Director, including a stop work or emergency order; and
  - i. Continuing Work. It is a violation for any work to be done after service or posting of a stop work order, except work necessary to perform the required corrective action, until authorization is given by the Director.

#### B. Criminal Violations.

1. The following are criminal violations, punishable upon conviction by a fine of not more than \$5,000 per violation or imprisonment for each violation for not more than 360 days, or both such fine and imprisonment:

- a. Failing to comply with a Notice of Violation or Director's order issued pursuant to this subtitle;
- b. Failing to comply with a court order;
- c. Tampering with or vandalizing any part of a drainage control facility or other best management practice, a public or private drainage system, monitoring or sampling equipment or records, or notices posted pursuant to this subtitle; and
- d. Anyone violating this subtitle who has had a judgment, final Director's order, or Director's review decision against them for a prior violation of this subtitle in the preceding five years.

(Ord. 123105, § 4, 2009.)

#### 22.808.020 - Liability and Defenses of Responsible Parties

- A. Who Must Comply. It is the specific intent of this subtitle to place the obligation of complying with its requirements upon the responsible parties, as defined in subsection 22.801.190. The City and its agencies are intended to have the same obligation for compliance when the City is a responsible party. No provision of this subtitle is intended to impose any other duty upon the City or any of its officers or employees.
  1. Joint and Several Liability. Each responsible party is jointly and severally liable for a violation of this subtitle. The Director may take enforcement action, in whole or in part, against any responsible party. All applicable civil penalties may be imposed against each responsible party.
  2. Allocation of Damages. In the event enforcement action is taken against more than one responsible party, recoverable damages, costs, and expenses may be allocated among the responsible parties by the court based upon the extent to which each responsible party's acts or omissions caused the violation. If this factor cannot be determined the court may consider:
    - a. Awareness of the violation;
    - b. Ability to correct the violation;
    - c. Ability to pay the damages, costs, and expenses;
    - d. Cooperation with government agencies;
    - e. Degree to which any impact or threatened impact on water or sediment quality, human health, the environment, or public or private property is related to acts or omissions by each responsible party;
    - f. Degree to which the responsible parties made good-faith efforts to avoid a violation or to mitigate its consequences; and
    - g. Other equitable factors.
- B. Defenses. A responsible party shall not be liable under this subtitle when the responsible party proves, by a preponderance of the evidence, one of the following:
  1. The violation was caused solely by an act of God;
  2. The violation was caused solely by another responsible party over whom the defending responsible party had no authority or control and the defending responsible party could not have reasonably prevented the violation;
  3. The violation was caused solely by a prior owner or occupant when the defending responsible party took possession of the property without knowledge of the violation, after using reasonable efforts to identify violations. But, the defending responsible party shall be liable for all continuing, recurrent, or new violations after becoming the owner or occupant; or
  4. The responsible party implemented and maintained all appropriate drainage control facilities, treatment facilities, flow control facilities, erosion and sediment controls, source controls, and best management practices identified in rules promulgated by the Director or in manuals



published by the State Department of Ecology, or as otherwise identified and required of the responsible party by the Director in writing.

(Ord. 123105, § 4, 2009.)

22.808.025 - Right of Entry for Enforcement

With the consent of the owner or occupant of a building, premises, or property, or pursuant to a lawfully issued warrant, the Director may enter a building, premises, or property at any reasonable time to perform the duties imposed by this code.

(Ord. 123105, § 4, 2009.)

22.808.030 - Enforcement Actions

A. Investigation. The Director may investigate any site where there is reason to believe that there may be a failure to comply with the requirements of this subtitle.

B. Notice of Violation.

1. Issuance. The Director is authorized to issue a Notice of Violation to a responsible party, whenever the Director determines that a violation of this subtitle has occurred or is occurring. The Notice of Violation shall be considered an order of the Director.
2. Contents.
  - a. The Notice of Violation shall include the following information:
    - 1) A description of the violation and the action necessary to correct it;
    - 2) The date of the notice; and
    - 3) A deadline by which the action necessary to correct the violation must be completed.
  - b. A Notice of Violation may be amended at any time to correct clerical errors, add citations of authority, or modify required corrective action.
3. Service. The Director shall serve the notice upon a responsible party either by personal service, by first class mail, or by certified mail return receipt requested, to the party's last known address. If the address of the responsible party cannot be found after a reasonable search, the notice may be served by posting a copy of the notice at a conspicuous place on the property. Alternatively, if the whereabouts of the responsible party is unknown and cannot be ascertained in the exercise of reasonable diligence, and the Director makes an affidavit to that effect, then service may be accomplished by publishing the notice once each week for two consecutive weeks in the City official newspaper.
4. Nothing in this subtitle shall be deemed to obligate or require the Director to issue a Notice of Violation or order prior to the initiation of enforcement action by the City Attorney's Office pursuant to subsection 22.808.030.E.

C. Stop Work and Emergency Orders.

1. Stop Work Order. The Director may order work on a site stopped when he or she determines it is necessary to do so in order to obtain compliance with or to correct a violation of any provision of this subtitle or rules promulgated hereunder or to correct a violation of a permit or approval granted under this subtitle.
  - a. The stop work notice shall contain the following information:
    - 1) A description of the violation; and
    - 2) An order that the work be stopped until corrective action has been completed and approved by the Director.

- b. The stop work order shall be personally served on the responsible party or posted conspicuously on the premises.
    2. Emergency Order.
      - a. The Director may order a responsible party to take emergency corrective action and set a schedule for compliance and/or may require immediate compliance with an emergency order to correct when the Director determines that it is necessary to do so in order to obtain immediate compliance with or to correct a violation of any provision of this subtitle, or to correct a violation of a permit or approval granted under this subtitle.
      - b. An emergency order shall be personally served on the responsible party or posted conspicuously on the premises.
      - c. The Director is authorized to enter any property to investigate and correct a condition associated with grading, drainage, erosion control, drainage water, or a drainage control facility when it reasonably appears that the condition creates a substantial and present or imminent danger to the public health, safety or welfare, the environment, or public or private property. The Director may enter property without permission or an administrative warrant in the case of an extreme emergency placing human life, property, or the environment in immediate and substantial jeopardy which requires corrective action before either permission or an administrative warrant can be obtained. The cost of such emergency corrective action shall be collected as set forth in subsection 22.808.060.
    3. Director's Review of Stop Work and Emergency Order. A stop work order or emergency order shall be final and not subject to a Director's review.
  - D. Review by Director.
    1. A Notice of Violation, Director's order, or invoice issued pursuant to this subtitle shall be final and not subject to further appeal unless an aggrieved party requests in writing a review by the Director within ten days after service of the Notice of Violation, order or invoice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until 5:00 p.m. on the next business day.
    2. Following receipt of a request for review, the Director shall notify the requesting party, any persons served the Notice of Violation, order or invoice, and any person who has requested notice of the review, that the request for review has been received by the Director. Additional information for consideration as part of the review shall be submitted to the Director no later than 15 days after the written request for a review is mailed.
    3. The Director will review the basis for issuance of the Notice of Violation, order, or invoice and all information received by the deadline for submission of additional information for consideration as part of the review. The Director may request clarification of information received and a site visit. After the review is completed, the Director may:
      - a. Sustain the Notice of Violation, order, or invoice;
      - b. Withdraw the Notice of Violation, order or invoice;
      - c. Continue the review to a date certain for receipt of additional information; or
      - d. Modify or amend the Notice of Violation, order, or invoice.
    4. The Director's decision shall become final and is not subject to further administrative appeal.
  - E. Referral to City Attorney for Enforcement. If a responsible party fails to correct a violation or pay a penalty as required by a Notice of Violation, or fails to comply with a Director's order, the Director shall refer the matter to the City Attorney's Office for civil or criminal enforcement action. Civil actions to enforce a violation of this subtitle shall be exclusively in Municipal Court.
  - F. Appeal to Superior Court. Because civil actions to enforce Title 22 are brought exclusively in Municipal Court, notices of violation, orders, and all other actions made under this chapter are not subject to judicial review under chapter 36.70C RCW. Instead, final decisions of the Municipal Court

on enforcement actions authorized by this chapter may be appealed under the Rules of Appeals of Decisions of Courts of Limited Jurisdiction.

- G. Filing of Notice or Order. A Notice of Violation, voluntary compliance agreement or an order issued by the Director or court, may be filed with the King County Recorder's Office.
- H. Change of Ownership. When a Notice of Violation, voluntary compliance agreement, or an order issued by the Director or court has been filed with the King County Recorder's Office, a Notice of Violation or an order regarding the same violations need not be served upon a new owner of the property where the violation occurred. If no Notice of Violation or order is served upon the new owner, the Director may grant the new owner the same number of days to comply as was given the previous owner. The compliance period for the new owner shall begin on the date that the conveyance of title to the new owner is completed.

(Ord. 123105, § 4, 2009.)

#### 22.808.040 - Voluntary Compliance Agreement

- A. Initiation. Either a responsible party or the Director may initiate negotiations for a voluntary compliance agreement at any time. Neither has any obligation to enter into any voluntary compliance agreement.
- B. Contents. A voluntary compliance agreement shall identify actions to be taken by the responsible party that will correct past or existing violations of this subtitle. The agreement may also identify actions to mitigate the impacts of violations. The agreement shall contain a schedule for completion of the corrective actions and any mitigating actions. The agreement shall contain a provision allowing the Director to inspect the premises to determine compliance with the agreement. The agreement shall provide that the responsible party agrees the City may perform the actions set forth in the agreement if the responsible party fails to do so according to the terms and schedule of the agreement, and the responsible party will pay the costs, expenses and damages the City incurs in performing the actions, as set forth in Section 22.808.060.
- C. Effect of Agreement.
  - 1. A voluntary compliance agreement is a binding contract between the party executing it and the City. It is not enforceable by any other party. By entering into a voluntary compliance agreement, a responsible party waives the right to Director's Review of the Notice of Violation or order.
  - 2. Penalties may be reduced or waived if violations are corrected or mitigated according to the terms and schedule of a voluntary compliance agreement. If the responsible party fails to perform according to the terms and schedule of the voluntary compliance agreement, penalties for each violation addressed in the agreement may be assessed starting from the date the violation occurred, or as otherwise provided for in a Notice of Violation or Director's order.
- D. Modification. The terms and schedule of the voluntary compliance agreement may be modified by mutual agreement of the responsible party and either Director if circumstances or conditions outside the responsible party's control, or unknown at the time the agreement was made, or other just cause necessitate such modifications.

(Ord. 123105, § 4, 2009.)

#### 22.808.050 - Penalties and Damages

- A. Assessment of Penalties by the Director. The Director, after considering all available information, may assess a penalty for each violation of this subtitle based upon the Schedule of Civil Penalties.
- B. Schedule of Civil Penalties. The Director shall determine penalties as follows:
  - 1. Basic Penalty.

- a. **Maximum Penalty.** A violation of this subtitle is subject to a maximum civil penalty of up to \$5,000. Each day or portion thereof during which a violation of this subtitle exists is a separate violation of this subtitle.
- b. **Commencement Date.** The penalty shall commence on the date of the violation, unless otherwise provided for in a Notice of Violation or Director's order.
- c. **Assessment Matrix.** The penalty shall be assessed using a matrix of criteria and scored as defined in rules promulgated by the Director. The total score will equate with a penalty up to a maximum of \$5000 for each violation. The penalty shall be rated for severity by using the criteria listed below and by answering "No", "Possibly", "Probably", or "Definitely":
  - 1) Does the violation pose a public health risk;
  - 2) Does the violation cause environmental damage or adversely impact infrastructure;
  - 3) Was the responsible party willful or knowing of the violation;
  - 4) Was the responsible party unresponsive in correcting the violation;
  - 5) Was there improper operation or maintenance;
  - 6) Was there a failure to obtain necessary permits or approval;
  - 7) Does the violation provide economic benefit for non-compliance; and
  - 8) Was the violation a repeat violation.
- C. **Penalty for Significant Violation.** For violations causing significant harm to public health, safety, welfare, the environment, or private or public property, the Director may, as an alternative to the Basic Penalty, refer the matter to the City Attorney's Office for enforcement and request the City Attorney seek a penalty equivalent to the economic benefit the responsible party derived from the violation. Significant harm is damage or injury which cannot be fully corrected or mitigated by the responsible party, and which cannot be adequately compensated for by assessment of the Basic Penalty and costs, expenses, or damages under this subtitle. Economic benefit may be determined by savings in costs realized by the responsible party, value received by the responsible party, increased income to the responsible party, increase in market value of property, or any other method reasonable under the circumstances.
- D. **Damages.** Whoever violates any of the provisions of this subtitle shall, in addition to any penalties provided for such violation, be liable for any: investigation cost, cost to correct or any other cost expense; loss or damage incurred by the City; plus a charge of 15% for administrative costs. This subtitle does not establish a cause of action that may be asserted by any party other than the City. Penalties, damages, costs and expenses may be recovered only by the City.
- E. **Effect of Payment of Penalties.** The responsible party named in a Notice of Violation or order is not relieved of the duty to correct the violation by paying civil penalties.

(Ord. 123105, § 4, 2009.)

#### 22.808.060 - Collection of Costs and Penalties

- A. **Invoice and Demand for Payment of Investigation and Correction Costs.** The Director may issue an invoice and demand for payment of the City's costs and expenses when the Director has investigated or corrected a violation of this subtitle. The invoice shall include:
  1. The amount of the City's investigation and correction costs, which include, but are not limited to:
    - a. Billed cost including labor, administration, overhead, overtime, profit, taxes, and other related costs for a hired contractor to investigate and/or perform the abatement work;
    - b. Labor, administration, overhead, overtime, and other related costs for the City staff and crews to investigate and/or perform the abatement work;
    - c. Administrative costs to set up contracts and coordinate work;

- d. Time spent communicating with the responsible party, any other enforcing agencies, and the affected community;
  - e. Inspections for compliance with the Code, documentation of costs, and invoicing the responsible party;
  - f. Cost of equipment, materials, and supplies, including all related expenses for purchasing, renting, and leasing;
  - g. Laboratory costs and analytical expenses;
  - h. Cost of mobilization, disposal of materials, and cleanup, and
  - i. Any associated permit fees;
2. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the King County Assessor or, where available, the property's street address;
  3. Notice that the responsible party may request a Director's review pursuant to subsection 22.808.030.D;
  4. Notice that if the amount due is not paid within 30 days, the unpaid amount may be collected in any of the manners identified in subsection 22.808.060.C; and
  5. Notice that interest shall accrue on the unpaid balance if not paid within 30 days after the invoice date.
- B. Invoice and Demand for Payment of Civil Penalties. The Director may issue an invoice and demand for payment of civil penalties when the responsible party has failed to pay a penalty by the deadline in a Notice of Violation or order and has failed to request a Director's review or file an appeal within the required time periods established in subsection 22.808.030.D. The invoice shall include:
1. The amount of the penalty;
  2. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the King County Assessor or, where available, the property's street address;
  3. Notice that if the amount due is not paid within 30 days, the unpaid amount may be collected in any of the manners identified in subsection 22.808.060.C and
  4. Notice that interest shall accrue on the unpaid balance if not paid within 30 days after the invoice date.
- C. Collection Following a Judicial Review. If a court has issued an order or judgment imposing penalties, costs, damages, or expenses for a violation of this subtitle, and the court's order or judgment is not appealed within 30 days, the Director may:
1. Refer the matter to the City Attorney to initiate appropriate enforcement action;
  2. Refer, after consultation with the City Attorney, the matter to a collection agency; or
  3. Add a surcharge in the amount owed under the order to the bill for drainage and wastewater services to the site. If unpaid, the surcharge may become a lien on the property, may be foreclosed, and may accrue interest as provided by state law or Section 21.33.110.

(Ord. 123105, § 4, 2009.)

22.808.070 - Public Nuisance

- A. Abatement Required. A public nuisance affecting drainage water, drainage, erosion control, grading and other public nuisances set forth in this subsection are violations of this subtitle. A responsible party shall immediately abate a public nuisance upon becoming aware of its existence.

- B. **Dysfunctional Facility or Practice.** Any private drainage control facility or best management practice not installed or maintained as required by this subtitle, or otherwise found to be in a state of dysfunction creating, a threat to the public health, safety or welfare, the environment, or public or private property is a public nuisance.
- C. **Obstruction of Watercourse.** Obstruction of a watercourse without authorization by the Director, and obstruction in such a manner as to increase the risk of flooding or erosion should a storm occur, is a public nuisance.
- D. **Dangerous Conditions.** Any condition relating to grading, drainage water, drainage or erosion which creates a present or imminent danger, or which is likely to create a danger in the event of a storm, to the public health, safety or welfare, the environment, or public or private property is a public nuisance.
- E. **Abatement by the City.** The Director is authorized, but not required to investigate a condition that the Director suspects of being a public nuisance under this subtitle, and to abate any public nuisance. If a public nuisance is an immediate threat to the public health, safety or welfare or to the environment, the Director may summarily and without prior notice abate the condition. The Director shall give notice of the abatement to the responsible party as soon as reasonably possible after the abatement.
- F. **Collection of Abatement Costs.** The costs of abatement may be collected from the responsible party, including, a reasonable charge for attorney time, and a 15% surcharge for administrative expenses as set forth in subsection 22.808.050.D. Abatement costs and other damages, expenses and penalties collected by the City shall go into an abatement account for the department collecting the moneys. The money in the abatement account shall be used for abatements, investigations, and corrections of violations performed by the City. When the account is insufficient the Director may use other available funds.

(Ord. 123105, § 4, 2009.)

#### 22.808.080 - Additional Relief

In addition to any remedy provided in this subtitle, the Director may seek any other legal or equitable remedy to enjoin any acts or practice or abate any condition that or will constitute a violation of this subtitle or a public nuisance.

(Ord. 123105, § 4, 2009.)

#### 22.808.090 - Suspension or Revocation

Approvals or permits granted on the basis of inaccurate or misleading information may be suspended or revoked. Other permits or approvals interrelated with an approval suspended or revoked under this subsection, including certificates of occupancy or approvals for occupancy, may also be suspended or revoked. When an approval or permit is suspended or revoked, the Director may require the applicant take corrective action to bring the project into compliance with this subtitle by a deadline set by the Director, or may take other enforcement action.

(Ord. 123105, § 4, 2009.)

#### 22.808.100 - Fees

Fees for grading permits, drainage control plan review and approvals shall be as identified in the Fee Subtitle, Subtitle IX of Title 22, Seattle Municipal Code. Fees for record-keeping or other activities pursuant to this subtitle shall, unless otherwise provided for in this subtitle, be prescribed by ordinance.

(Ord. 123105, § 4, 2009.)

#### 22.808.110 - Financial Assurance and Covenants

As a condition precedent to issuance of any permit or approval provided for in this subtitle, the Director may require an applicant for a permit or approval to submit financial assurances as provided in this subsection.

A. Insurance.

1. The Director may require the property owners or contractor carry liability and property damage insurance naming the City as an additional insured. The amount, as determined by the Director, shall be commensurate with the risks.
2. The Director may also require the property owner maintain a policy of general public liability insurance against personal injury, death, property damage and/or loss from activities conducted pursuant to the permit or approval, or conditions caused by such activities, and naming the City as an additional insured. The amount, as determined by the Director, shall be commensurate with the risks. It shall cover a period of not more than ten years from the date of issuance of a certificate of occupancy or finalization of the permit or approval. A certificate evidencing such insurance shall be filed with the Director before issuing a certificate of occupancy or finalizing a permit for any single family dwelling or duplex.
3. The insurance policy shall provide that the City will be notified of cancellation of the policy at least 30 days prior to cancellation. The notice shall be sent to the Director who required the insurance and shall state the insured's name and the property address. If a property owner's insurance is canceled and not replaced, the permit or approval and any interrelated permit or approval may be revoked, including a certificate of occupancy or approval for occupancy.

B. Bonds, Cash Deposits or Instruments of Credit.

1. Surety Bond.

- a. The Director may require that the property owners or contractor deliver to the Director for filing in the Office of the City Clerk a surety bond, cash deposit or an instrument of credit in such form and amounts deemed by the Director to be necessary to ensure that requirements of the permit or approval are met. A surety bond may be furnished only by a surety company licensed to do business in The State of Washington. The bond shall be conditioned that the work will be completed in accordance with the conditions of the permit or approval, or, if the work is not completed, that the site will be left in a safe condition. The bond shall also be conditioned that the site and nearby, adjacent or surrounding areas will be restored if damaged or made unsafe by activities conducted pursuant to the permit or approval.
- b. The bond will be exonerated one year after a determination by the Director that the requirements of the permit or approval have been met. For work under a building permit, issuance of a certificate of occupancy or approval for occupancy following a final inspection shall be considered to be such a determination.

2. Assurance in Lieu of Surety Bond. In lieu of a surety bond, the owners may elect to file a cash deposit or instrument of credit with the Director in an amount equal to that which would be required in the surety bond and in a form approved by the Director. The cash deposit or instrument of credit shall comply with the same conditions as required for surety bonds.

C. Covenants.

1. The Director may require a covenant between the property owners and the City. The covenant shall be signed by the owners of the site and notarized prior to issuing any permit or approval in a potential landslide area, potentially hazardous location, flood prone zone, or other area of potentially hazardous soils or drainage or erosion conditions. The covenant shall not be required where the permit or approval is for work done by the City. The covenant shall include:

- a. A legal description of the property;
  - b. A description of the property condition making this subsection applicable;
  - c. A statement that the owners of the property understands and accepts the responsibility for the risks associated with development on the property given the described condition, and agrees to inform future purchasers and other successors and assignees of the risks;
  - d. The application date, type, and number of the permit or approval for which the covenant is required; and
  - e. A statement waiving the right of the owners, the owners' heirs, successors and assigns, to assert any claim against the City by reason of or arising out of issuance of the permit or approval by the City for the development on the property, except only for such losses that may directly result from the sole negligence of the City.
2. The covenant shall be filed by the Director with the King County Recorder's Office, at the expense of the owners, so as to become part of the King County real property records.

(Ord. 123105, § 4, 2009.)

#### 22.808.140 - Severability

The provisions of this subtitle are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, section or portion of this subtitle, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this subtitle or the validity of its application to other persons or circumstances.

(Ord. 116425 § 2(part), 1992.)





ACTION CALENDAR

January 22, 2019

*(Continued from December 11, 2018)*

To: Honorable Mayor and Members of the City Council  
From: Community Environmental Advisory Commission (CEAC)  
Submitted by: Michael Goldhaber, Chair, CEAC  
Subject: Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties

RECOMMENDATION

Since the drought-storm-flooding cycle is predicted to get worse, refer to the City Manager to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period. The City Manager and staff should consider the following:

- Comply beyond the State and Alameda County current requirements;
- Encourage the treating and detaining of runoff up to approximately the 85th percentile of water deposited in a 24-hour period;
- Establish site design measures that include minimizing impervious surfaces;
- Require homeowners to include flooding offsets in preparing properties for sale;
- Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff;
- Require abatements for newly paved areas over a specific size;
- Make exceptions for properties that offer significantly below-market rent or sale prices;
- Authorize a fee for all new construction or for title transfer to cover the cost of required compliance inspections.
- Incorporate these measures for private property with similar measures for Public Works, while coordinating with EBMUD, BUSD, UCB and LBNL.

SUMMARY

Current climate-change predictions for California suggest severe droughts combined with extreme storms, causing dangerous erosion, flooding, and increased Bay pollution. According to Berkeley's watershed management plan, in a 10-year storm or greater, both the Codornices and Potter Creek watersheds have a propensity to flood, and climate change increases the probability and severity of storms. BART and the city currently run pumps to mitigate the flow underground.

In order to prevent flooding, there is an urgent need for the City to offset impermeable surfaces and detain stormwater. Impermeable surfaces generate faster stormwater flows of more intensity (volume per duration), therefore creating greater flooding threats. In addition, stormwater flows carries trash, pathogens, pesticides, fertilizer, metals, motor vehicle related contaminants to the creeks and the Bay. Stormwater detention can help mitigate this pollution.

On June 14, 2018, the Commission voted to adopt the Mandatory and Recommended Green Storm Water Infrastructure in New and Existing Redevelopments and send them to council. [Motioned/Seconded: Hetzel/Kapla. Carried: Unanimously (Liz Varnhagen, Fred Hetzel, Robb Kapla, Michael Goldhaber (chair), Ben Gould, and Kristina Lim). Absent: Carla Ticconi, Holly Williams]

#### FISCAL IMPACTS OF RECOMMENDATION

If inspection fees are adequate, there should be no net costs to the City, except for staff time to firm up the plan. With widespread implementation of features that promote stormwater detention, treatment, and infiltration, overall flood damage within the City should decrease, which in turn could result in increased property values and higher tax revenues.

#### CURRENT SITUATION AND ITS EFFECTS

This report responds to Referral #2016-21, which originally appeared on the agenda of the September 15, 2015 Council meeting and was sponsored by then-Councilmember Arreguin.

The State stormwater discharge permit requires the City of Berkeley to use Low Impact Design (LID) and Green Infrastructure (GI) to comply with stormwater management requirements, which is in keeping with Berkeley's goals for promoting sustainable development.

Currently, the City does seem to be enforcing rules requiring mitigation when 2,500 square feet or more of new impermeable surface is added to a property. Required mitigation typically takes up an area of approximately 4% of the total new impermeable area and is therefore a very fair and feasible requirement. However, smaller areas, especially pavement, ought to require similar mitigation as they increase runoff.

At present, permits are not required for adding new pavement unless these impinge on the street-property boundary. As a result, the City and its inspectors are not aware of most small projects that add new pavement. Requiring permits for all (most) (re)paving over permeable surfaces will help ensure that the City is aware, can ask for appropriate mitigation, or can recommend permeable paving that will reduce runoff. Requiring permits for paving beyond a very small threshold area is an essential part of preventing the cumulative effects of increased stormwater runoff.

All these requirements can be met by using on- or off-site strategies to manage the quantity and quality of stormwater runoff. The approach integrates stormwater into the urban environment to achieve multiple goals. It reduces stormwater pollution and restores natural hydrologic function to the City's watersheds. It can also provide wildlife habitat and contribute to the gradual creation of a greener city.

A crucial aspect of identifying and implementing effective mitigation, also mandated by law, is within a comprehensive Watershed Management Plan, which we understand the City is committed to complete. This should include both water from private properties, the topic of this CEAC message, and the City's contributions from public properties including streets and parks.

### BACKGROUND

A recent UCLA study ["Increasing precipitation volatility in twenty-first-century California", Daniel L. Swain, Baird Langenbrunner, J. David Neelin & Alex Hall, *Nature Climate Change* 8, 427–433 (2018)] ... "found that over the next 40 years, the state will be 300 to 400 percent more likely to have a prolonged storm sequence as severe as the one that caused a now-legendary California flood more than 150 years ago.

"The Great Flood of 1862 filled valleys with feet of water and washed gold rush miners and their equipment out of the mountains. In the Central Valley, floodwaters stretched up to 300 miles long and as wide as 60 miles across." [*UCLA Newsroom*]

When there are heavy storms in Berkeley such as 10-year or greater, stormwater that is not absorbed runs downhill towards the Bay and collects in low elevation areas. As the movement of stormwater slows, it can result in flooding if drainage channels become overwhelmed, unless there are means of capturing the water for irrigation or other beneficial uses. It can also pick up pollutants that then will be carried into streams and eventually the Bay.

Urban development has caused two important changes in the nature and volume of stormwater. First, natural, vegetated permeable ground cover is converted to impermeable surfaces such as paved highways, streets, rooftops, and parking lots. Vegetated soil can both absorb rainwater and remove pollutants, providing a very effective natural purification process. This benefit is lost when pavement, or buildings are constructed. With the construction of more impermeable surface, stormwater runoff increases in intensity with higher flows of shorter duration, increasing the chance of overwhelming drainage channels and flooding in flood prone areas.

In addition, urban development creates pollution sources as urban population density increases. The contamination of urban stormwater comes from many and various sources including pathogens from both pet and human waste, solid waste from litter and trash, pesticides from both residential and commercial uses, fertilizers from

landscaping, and heavy metals and other contaminants from the operation of motor vehicles. All these pollutants and others can be deposited on paved surfaces, rooftops, and other impervious surfaces as fine airborne particles, thus yielding stormwater - runoff pollution that is unrelated to the activity associated with a given project site.

As a result of these two changes, stormwater discharges into the Bay from the developed urban area is significantly greater in volume, velocity and contaminants than the same area experienced prior to its conversion into an urban environment.

Additionally, increased flows and volumes of stormwater discharged from new impermeable surfaces resulting from new development and redevelopment can physically modify the natural aquatic ecosystems in our creeks, through bank erosion and deepening and widening of channels, elevating turbidity and sediment loads to the Bay.

Pollutants of concern in stormwater include heavy metals, excessive sediment production from erosion, petroleum hydrocarbons from sources such as motor vehicles, microbial pathogens of domestic sewage origin from illicit or accidental discharges, pesticides and herbicides, nutrients (from fertilizers), and trash.

Effective mitigation to offset the unpredictable and sometimes intense behavior of urban stormwater becomes increasingly necessary. Other cities, including San Francisco, Emeryville, and the North Bay Counties (Marin, Sonoma, Napa and Solano), as well as the Alameda County clean water program, of which the City of Berkeley is a member, have put together comprehensive requirements that are available as guides. Berkeley, given our pioneering status in green issues, should wish to be even more forward looking and develop our own comprehensive green infrastructure program. In addition, Berkeley should continue to work on a comprehensive water management plan, seeking input and cooperation from EBMUD, surrounding cities, UCB, LBNL and BUSD.

Berkeley's program should include requirements for construction projects to implement appropriate source control, site design, and stormwater treatment measures to address water quality, and to prevent increased intensity stormwater runoff volumes.

#### ENVIRONMENTAL SUSTAINABILITY

The proposed recommendation will improve the sustainability of new construction and redevelopment, increase the City's resiliency to climate change, 10-year storms, and flooding, while helping mitigate pollution from stormwater runoff.

RATIONALE FOR RECOMMENDATION

Berkeley's drought-storm cycle is likely to get worse as Climate change has more effecting the coming years and decades. Therefore, more efforts to control flooding and prevent pollution are needed. In addition, unless mitigated, increased paving on private property increases the stormwater runoff and related problems.

ALTERNATIVE ACTIONS CONSIDERED

CEAC considered City Council Referral #2016-21 from September 15, 2015 to develop an ordinance requiring large residential developments of 100 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface, to incorporate Green Stormwater Infrastructure (GSI) and water conservation features into new projects.

CITY MANAGER

See companion report.

CONTACT PERSON

Viviana Garcia, Secretary, Toxics, (510) 981 7460





Office of the City Manager

ACTION CALENDAR

January 22, 2019

*(Continued from December 11, 2018)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning and Development Department  
Phil Harrington, Director, Public Works Department

Subject: Companion Report to Referral Response: Mandatory and Recommended  
Green Stormwater Infrastructure in New and Existing Redevelopments or  
Properties

RECOMMENDATION

Express appreciation for the intent of the Community Environmental Advisory Commission (CEAC) recommendation to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period, and allow staff to continue existing efforts to implement Municipal Regional Stormwater Permit regulations in coordination with the 14 other local governments and agencies that participate in the Alameda Countywide Clean Water Program.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts from adopting the recommendation in the City Manager's companion report. Implementation of the CEAC recommendation could entail significant costs in staff time for analysis and enforcement, and to homeowners and developers of projects which would incur significant additional costs in project design and City fees.

CURRENT SITUATION AND ITS EFFECTS

In response to a referral from 2015, CEAC has recommended that the City Manager develop and adopt requirements for stormwater runoff abatement and retention which would go significantly beyond current requirements, and would include projects of much smaller scope than are covered by existing requirements.

Projects in Berkeley and throughout Alameda County are currently governed by Municipal Regional Stormwater NPDES<sup>1</sup> Permit (MRP 2.0) regulations. While the City of Berkeley is an individual permittee and is responsible for its own compliance with MRP 2.0, the City has joined with 13 other Alameda County cities, the county itself, the Alameda County Flood Control and Water Conservation District, and Zone 7 Water Agency to form the Alameda Countywide Clean Water Program (the ACCWP). City of Berkeley staff from the Public Works Department, the Toxic Management Division of the

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<sup>1</sup> National Pollutant Discharge Elimination System

Planning Department, and the Environmental Health Division of the Health, Housing, and Community Services Department attend meetings on at least a monthly basis for the various subcommittees of the ACCWP. Many MRP 2.0 compliance documents, tools, and methodologies are worked on collaboratively through the ACCWP. Implementation of the CEAC recommendation would require the City to duplicate many efforts of the ACCWP, increasing the City's costs and diminishing the value of the City's membership in the ACCWP.

Current MRP regulations cover new developments, maintenance of commercial and industrial facilities, construction-related practices, municipal requirements for stormwater treatment and trash control, enforcement practices, and reporting requirements. Current regulations generally require development projects that create or replace 10,000 square feet or more of impervious surface to incorporate stormwater treatment measures, such as flow-through planters, bioswales, or permeable pavement. For projects between 2,500 and 10,000 square feet, applicants are required to install at least one of six site design measures, such as directing roof runoff to rain barrels or vegetated areas; directing runoff from sidewalks, walkways, parking lots to vegetated areas; constructing sidewalks, walkways and parking lots with permeable surfaces, etc. These requirements follow section C.3 of MRP 2.0. Compliance is monitored and verified by the Public Works Department, conditions are written into Land Use Planning approvals, and are reviewed by Building and Safety Division staff during the plan check process.

Staff believe that lowering area thresholds covered by stormwater requirements would represent a departure from the regional cooperation under MRP 2.0, which has made significant strides in improving stormwater practices. The lower thresholds proposed by CEAC would result in significant added costs for smaller development projects, which in most cases would need to retain additional professional hydrology expertise in the project development phase. Such projects would further incur additional costs by the fees the City would need to impose to cover project review and enforcement activities, the extent of which would be exponentially larger in scale as staff would need to review and enforce several orders of magnitude more qualifying projects. For example, CEAC's proposal to require an additional permit for all paving and repaving activities on private properties would represent an enormous enforcement challenge which could not be met with existing staff resources.

As mandated by MRP 2.0, the City is currently preparing a Green Infrastructure Plan that will set goals for the amount of impervious area within the City to be treated by green infrastructure by 2030 and 2040. Current and future City efforts to incorporate green infrastructure in City Capital Improvement Projects will have the effect of detaining significant stormwater runoff from all sources, including private property.



### BACKGROUND

The federal Clean Water Act (CWA) was amended in 1987 to address urban stormwater runoff pollution of the nation's waters. In 1990, the United States Environmental Protection Agency (US EPA) promulgated rules establishing Phase 1 of the National NPDES stormwater program. The Phase 1 program for Municipal Separate Storm Sewer System (MS4s) requires operators that serve populations of 100,000 or greater to implement a stormwater management program as a means to control polluted discharges from these MS4s.

The San Francisco Bay Regional Water Quality Control Board (the Regional Water Board) issued county-wide municipal stormwater permits in the early 1990s to operators of MS4s serving populations over 100,000 (Phase 1). On November 19, 2015, the Regional Water Board re-issued these county-wide municipal stormwater permits as one Municipal Regional Stormwater NPDES Permit (MRP 2.0) to regulate stormwater discharges from municipalities and local agencies in Alameda, Contra Costa, San Mateo, and Santa Clara counties, and the cities of Fairfield, Suisun City, and Vallejo. The City of Berkeley works with the Alameda Countywide Clean Water Program (ACCWP) and the Bay Area Stormwater Management Agencies Association (BASMAA) to ensure compliance with MRP 2.0.

### ENVIRONMENTAL SUSTAINABILITY

The CEAC recommendation and the staff recommendation are both consistent with City environmental sustainability goals. Staff resources are currently allocated to compliance with the environmental protection requirements of MRP 2.0.

### RATIONALE FOR RECOMMENDATION

Existing enforcement mechanisms and oversight bodies are designed to remediate stormwater runoff in the most cost-effective manner, without imposing significant additional costs on development and staff enforcement capacity.

### CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7437  
Phil Harrington, Director, Public Works Department, 510-981-6303





Zero Waste Commission

ACTION CALENDAR

January 22, 2019

*(Continued from December 11, 2018)*

To: Honorable Mayor and Members of the City Council

From: Zero Waste Commission

Submitted by: Chrise de Tournay Birkhahn, Chairperson, Zero Waste Commission

Subject: Referral Response: Berkeley Single Use Foodware and Litter Reduction Ordinance

RECOMMENDATION

Review the results of the Zero Waste Commission's community outreach and analysis provided in response to Council's referral and consider incorporating the Zero Waste Commission recommendations for improvements into the referred draft proposed Berkeley Single Use Foodware and Litter Reduction Ordinance (Attachment 1).

SUMMARY

The Zero Waste Commission was tasked by Council to invite input from the public and key stakeholders, including restaurants, food retailers, the disabled community, and other City commissions on the proposed Ordinance. This report includes results of the community and business outreach, including analysis and recommendations for improvements to the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

FISCAL IMPACTS OF RECOMMENDATION

The added cost of the referral is staff time to review recommendations, including health codes and operations.

CURRENT SITUATION AND ITS EFFECTS

This report responds to referral that originally appeared as item 34 on the agenda of the April 24, 2018 Council meeting. This referral was sponsored by Councilmember Sophie Hahn and Mayor Jesse Arreguin, and Councilmembers Linda Maio and Susan Wengraf.

At the City Council meeting on April 24, 2018 the City Council approved the following recommendation:

1. Refer the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance to the Zero Waste Commission to invite input from key stakeholders, including restaurants and other food retailers and zero waste, plastics, oceans

and other environmental experts, and hold public meetings to obtain input on the proposed Ordinance; and

2. Refer to the Zero Waste Commission to report back to the City Council results of the Commission's community outreach and analysis, and provide recommendations for improvements to the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

The Zero Waste Commission held seven public input sessions, two of which were part of the extended public comment period at monthly Zero Waste Commission meetings. The meetings were held on different days of the week, at different times, and in different geographic locations around the City. The Zero Waste Commission has compiled a report of recommendations (Attachment 1) and public comments (Attachment 2) from these listening sessions and from written comments submitted by the public and stakeholders.

#### BACKGROUND

Single-use disposable foodware and packaging (SUDs) is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The practice of providing food and beverage packaging free-of-charge fails to incorporate the environmental and social costs of these products into the price of the products.

SUDs are costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables. In order for Berkeley to reach its Zero Waste goals, the City must reduce use of unnecessary single-use food and beverage packaging.

The Zero Waste Commission approved their recommendations for improvements to the Berkeley Single Use Foodware and Litter Reduction Ordinance at the September 24, 2018 regular meeting of the Zero Waste Commission. Motion: Sharenko; Second: Stein; Vote: 7 Ayes: de Tournay, Twu, Poliwka, Sharenko, McKinstry, Stein, Whitney; Noes: None; Abstain: None; Absent: Watson, Clark.

#### ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, greenhouse gas emissions, and harm to wildlife. The ordinance represents a step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions, and meeting State trash load level mandates.

#### RATIONALE FOR RECOMMENDATION

Referral Response:  
Berkeley Single Use Foodware and Litter Reduction Ordinance

ACTION CALENDAR  
January 22, 2019

The Zero Waste Commission recommendations are based on an analysis of the gathered public and stakeholder feedback. Incorporation of the recommendations will lead to an improved Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

See companion report.

CONTACT PERSON

Heidi Obermeit, Recycling Program Manager, Zero Waste Commission Secretary,  
Department of Public Works, 510-981-6357

Attachments:

- 1: Zero Waste Commission Recommendations for the Proposed Berkeley Single Use Foodware and Litter Reduction Ordinance
- 2: Public and Stakeholder Comments Collected
- 3: April 24, 2018 City Council Referral Report and Draft Proposed Berkeley Single Use Foodware and Litter Reduction Ordinance

## Zero Waste Commission Recommendations for the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance

*Note that comments may not be verbatim, and that “recyclable” materials refer ONLY to those accepted in the City’s Curbside Recycling Collection Program.*

### TOPIC: Requiring Durable/Reusable Foodware for DINING-IN

Comments received:

- Space concerns for installing washing machines/water usage/reusable ware
- Durable foodware poses a safety threat to employees if used as projectiles (comment from Top Dog)
- Labor costs to train and require employees to wash durable food ware

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Provide free technical assistance to help food establishments plan operations and equipment changes
- Provide small grants or loans to help defray the up-front costs of purchasing reusable foodware and re-configuring kitchens
- Allow private off-site washing/cleaning services to provide service in lieu of on-site cleaning.
- Exempt certain establishments from the 100% reusable requirement on a case-by-case basis, if they can prove it was impossible to implement all requirements due to unique considerations, so long as a good faith effort is made to do the most possible to achieve goals of ordinance.
- Compostable items used in any case where use of reusables are determined non-implementable by City.
- City-wide funded education program for businesses to transition to requirements of ordinance.
- Provide fact-sheet/FAQ for businesses

### TOPIC: Collection and Documentation of SUD Charge-Added complexity/logistics

Comments Received:

- Multiple business owners expressed concern about how to implement the SUD charge.
- Need clarification on how to enter line item(s) for SUD charges? (Ex: Does a customer who orders a soup, salad, and sandwich need three SUD line items, each item to be documented?)
- Limited/low quality of labor and high cost of business makes this a real issue
- Many people do not request a receipt - is this non-compliant with ordinance requiring public notification of charge?

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Clarify requirements for reporting line-item charges on receipts (virtual or hardcopy)
- Provide fact-sheet/FAQ for businesses

**TOPIC: Ordinance targets prepared/served food produced in-house for take-out, while exempting other waste generating food-serving establishments (ex: pre-packaged take-out food from grocery stores, coffee chains, movie theaters).**

Comments:

- Food that is trucked in (examples: Trader Joe's salads, to-go prepared food at grocery stores, coffee chains) can be packed in any container with no fee, thus targeting small, local businesses.
- Similarly, will a fountain drink in a SUD is subject to a charge, but not a can of soda.
- Movie theaters do not have kitchens, cannot be expected to convert to reusables, request exemption from SUD charges.

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Phased approach to charge for take-out food ware, to ensure equity across businesses in Berkeley
- Examine ways to require compostable containers for prepared foods from other establishments besides those that produce food on-site for take-out (ex: grocery stores, coffee store chains)
- Include movie theaters for conversion to compostables if reusables are not possible.

**TOPIC: Availability of alternative compostable containers to contain all foods for take-out.**

Comments:

- No compostable containers exist that can hold items at 180F degrees
- No acceptable alternatives to plastic are currently available for all types of food condiments

Suggestion:

- Exempt items with no reasonable alternatives until acceptable/compliant items are available in the market Alternatives should be compostable or recyclable.
- City should work with recognized industry organizations for accepted standards of "best" items that comply with compostability and health concerns (ex: BPI) in order to develop approved list of compliant items

**TOPIC: Ordinance does not ensure compostable/recyclable SUD items will end up in proper source-separated stream.**

Comments:

- If SUDs are required to be compostable or recyclable, it is still likely these items will end up in landfill, based on consumer behavior and availability of recycle/compost collection containers. Suggest a focus on downstream user, as it is a known issue that waste streams are often poorly sorted.
- Overseas markets are no longer accepting our plastics, and they are harming the environment with litter and chemicals/degradation

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Funded City-wide program to educate consumers on proper sorting of waste and ordinance (FAQ)
- Improve collection through increased service and quantity of city bins in high-traffic food take-out establishments
- All items should be required to be compostable (no recyclable plastics), due to changing overseas markets
- Require customer-facing in-store compost bins for collection

**TOPIC: Charges for take-out containers when consumers have no alternative to BYO (affects consumer)**

Comments:

- Many restaurants are prohibited from in-house dining, and thus can only offer take out options.
- Results in customer complaints for being charged for take-out containers with no alternatives available.
- As customers have no choice, charge will not lead to a positive behavior change (*this issue is in contrast to the bag fee, where customers always have the choice to bring their own bags*).
- Take-out is an essential life factor for many customers.
- Punishing people for using such is regressive.
- Many businesses will not allow BYO take-out container to fill for sanitary concerns or health violations.
- With minimum wage increase, this ordinance would add just another increase in prices and be hard for consumers to swallow.
- Reusable cups brought in by customers have been relatively acceptable and exhibits positive behavior change
- Affects low-income stakeholders that may have no access to washing their BYO containers
- Incentives for discount for BYO instead of charges



Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Create a guidance document and feasibility study on “Bring Your Own...”
- Develop a pilot program for standardized reusable to-go container system.
- Implement phased-approach to charge: phase one for hot beverage containers/lids, phase two later for food containers after analyzing results of phase one implementation and pilot program
- Assess impacts of any charge on low-income, transient stakeholders
- Consider incentives for BYO as part of overall ordinance strategy
- Clarify in the ordinance language that there is no requirement for businesses to charge additional fees for disposables; the SUD fee must simply be itemized. (i.e. if a business currently charges \$10 for a meal, they can still charge \$10, but they need to itemize on the receipt the \$9.75 for meal + \$.0.25 for the disposable container.)

**TOPIC: BYO containers need to be acceptable to businesses for portion sizing and cleanliness/compliance with health codes. (affects Businesses)**

Comments:

- Many restaurants are prohibited from in-house dining, and thus can only offer take out options.
- Results in customer complaints for being charged for take-out containers with no alternatives available.
- As customers have no choice, charge will not lead to a positive behavior change
- Will potentially drive customers to neighboring cities lacking such an ordinance (*in contrast to bag fee, where BYOB is available*).
- Cleanliness of BYO brought in by customers is an issue
- Consider incentives for BYO as part of overall ordinance strategy

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Work with local health code departments for clarity on acceptable containers
- Work with businesses to support conditions of BYO containers provided by customers (beverage containers)
- Establish City-wide reusable container program (funding likely necessary)
- Consider pilot-program for reusable container program
- Implement phased-approach to charge: phase one for hot beverage containers/lids, phase two later for food containers after analyzing results of phase one implementation and pilot program

**TOPIC: Acceptable straws that meet ordinance requirements yet effectively serve disabled stakeholders.**

Comments:

- Disabled community has been left out of conversation
- Disabled stakeholders need straws that will not degrade or pose a choking hazard
- Other stakeholders that are not disabled may need straws (children, older people)

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Assess and study best alternatives available that are deemed acceptable for the disabled community.
- Bio-Plastic certified compostable straws could be exempted for said special uses/stakeholders, with recommendation that businesses have them available and provided upon request.
- For general use, specify compostable paper straws only, on request or self-service
- Possible: City purchase of reusable silicone straws to be distributed by City through disabled groups, commission, and other sanctioned methods (City of Alameda).

**Topic: Coordinate with existing laws/ordinances and seek support from the Alameda County Waste Management Authority (StopWaste).**

Comments:

- Replace “Disposable Food Packaging” with “Disposable Foodware” (StopWaste)
- Waivers: What would a partial waiver include? What happens after 3 years? What constitutes “make every effort to become compliant”? What type of activities/efforts would the city consider? What types of thresholds would be considered allowable under “space constraints?” (StopWaste)
- Clarify language of ordinance, including waivers, time frame, space constraints, free of added Fluorinated Chemicals
- If “to go” meal is served in a compliant reusable bag, an additional minimum \$0.10 will need to be charged to comply with Ordinance 2016-2, which could increase total “Takeout Meal” charges to be greater than \$0.25. There is no charge for carryout food given to customers in compliant paper bags. (StopWaste)

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Coordinate with ACWMA (StopWaste) to ensure language is consistent with existing ordinances
- Examine best practices of local communities in County and cities bordering City.
- Review Bag Ban ordinance for compliance and consideration of charge amount.

**The Commission recommends taking note of the following issues that should to be addressed:**

- Recyclability of most “plastic” foodware
- Difficulty to tell the difference between compostable bio-plastic utensils and plastic utensils
- Importance of City-approved list for acceptable materials for take-out containers
- Which food waste-generating establishments are exempted (ex. theaters)
- No plastic ware should be accepted, in spite of language in current City Curbside Recycling Collection Program accepted materials, due to market instability and environmental concerns.
- Amount of proposed charge (\$0.20 v. \$0.25) to balance customer behavior change with businesses concerns of loss of sales due to minimum wage hike and proposed charge.

June 16, 2018

**Special Meeting of the Zero Waste Commission Foodware Subcommittee to solicit public input**

**21 members of the public attended; 17 public comments.**

**Summary of Spoken Comments:**

**Peter Levitt**

Owner, Saul's Deli

I have a restaurant Saul's Deli so obviously I think the goals are admirable, I am just unclear about whether you are attacking the most used materials.

I am always concerned about going at the lowest hanging fruit especially when it pertains to the mom and pop.

And I have a deep concern, again once I have confidence that you have used the garbage cans widely enough in other words are we looking at the household mix in the resident?

How do the four Safeway's, the Trader Joe's, and the two whole foods the waste stress compared to our mom and pop restaurant, that is a big concern that we have.

I don't know if you are aware of what we have done at Saul's. But we have gone 10 years without straws

We thought it was the right move a long time ago, and inconvenient.

We do glass mason jars for soup, we now use sippy cups for children instead of the single use plastic glass. We haven't used straws, well we used paper straws for about 6 or 7 years then moved to stainless steel straws. So we now almost purchase almost no straws.

For us this was low hanging fruit, no one asked us to do it we just did it. I am just concerned with that we are going to end incurring costs that will be difficult for us especially in the climate of having minimum wage going up all of the time

And really do t love the idea of having a single line item on every invoice. I actually do not know how to implement it. Each and every customer is different. Does an employee have to enter a single button every time? What is a customer comes in for a soup salad and sandwich does the employee have to hit the button 3 times?

It's going to open up Pandora's Box and I do not see the solutions are and it is of great concern to us that we won't be able to hit the button or

The difficulty we are already having with labor and quality of labor

And the last thing I will say is that you do have your work cut out for you because every time you raise minimum wage restaurants like ours disappear and smaller hole in the wall type restaurants with few employees with no place come into existence. It's getting harder and harder. No one will reopen Saul's in this town. If we go away one day, we will be replaced by two smaller stores, and they will use straws and it will be a takeout environment.

**Lisa Brenners**

Farmer, Berkeley Farmers Market

My name is Lisa

I am from Berkeley, I am currently a farmer and I sell at the ecology farmer's market in downtown Berkeley on Saturdays. So I know firsthand, how much this kind of use of packaging demand is customer driven.

I stand at the market. My stuff is loose I have paper bags, but I know there is a segment of the population that will not pick up my fruit. But if I put it in this little red mesh bag that 20% increase in sells. I am comfortable with the bags, but there are people who will just not buy something that is not in a bag. So this is demand driven and the restaurants feel this.

Umm so I am going to go really fast I have a lot of points here. I think there might be a flaw if your goal is to reduce waste. You're changing the packaging, mandating it and charging for it. But the customer is still taking it home. They are responsible for disposable. If they do not dispose of it properly then it's in the landfill anyway. So that's just procedural thing. If the goal is that how have we improved?

The second point is that the ordinance may be unintentionally calls out and targets food that is produced on premises, locally if food is not produced locally it is trucked in... free pass. It's free and you can put it in anything you want. But if it is produced here're you having the rules there is a clarification I would like about conforming food ware. If a person used reusable food ware must they both meet the regulations and charge?

And the doggy bag loophole which I shouldn't mention because you will probably try to close it up, but right now it seems that if you go and have something on premises then ask for a doggy bag you can have any container you want and it is free.

So will the city commit to disposing properly of all these newly mandated disposable ware items?

**Jim Maser**

Owner, Picante

Hi my name is Jim and I own picante

In Berkeley on 6<sup>th</sup> street I have been there for 24 years, my colleague Peter couldn't make it, ditto on everything he has to say.

Since I am having a question-answer session, but it is one sided I am just going to throw some questions out there.

In regards to the containers themselves, has a container been come up with that can take a 180 degree food, because that's my biggest challenge. Peter has met it with glass bottle I am unable to meet that with chili rellenos or .. or anything that came off of the stove at 180 degrees it burns through anything tested and right into the upholstery of my guests cars.

The receipt issue. I want to reiterate what Peter said, using social guilt on that is works, it worked in SF for our colleagues for health programs for our colleagues over there. However the cost benefit analyses. I am not sure what business were looked at, where the dishwashers were bought from. But we look at that 25 cents as the differential between the products that you are going to recommend and conventional products that are used now and that is not going to bridge the gap for the increased cost. These 25 cents does not drop to the bottom line it is taxed and if you take the 35 percent tax out we really are going to end up with 16 cents and will that really be differential. I have tried to use the highest quality products that are available and with minimum wage hitting us the way it has been we have had to make compromises that doesn't sit well with my heart.

For all the big gulps, is theater popcorn being charged, but the one it get for coca cola will not because it is not manufactured in the theater?

The ordinance is very confusing in regards to who it is going to apply to. My recommendations are that from your test study at café Strada that you use disposable cups and .....

I want to finish up, if paper cups are major problem implement the charge for the cups also please do the straw ordinance right away, other cities in California have already done, the restaurant association is going to do it, and it's a small step towards curbing our reliance on these convenience products which we will hopefully contribute to the change of attitudes and usage but please take one step at a time, regardless of the request of the city council, that seems lazy because in my book change takes time.

### **Heliya Izadpanah**

#### **Cal Dining Services**

So I work at Cal Dining on waste reduction, and over the past year I've been trying to get more reusable products in our campus that are breaking down. We just switched to paper straws, and PLA clamshells that aren't breaking down.

I am curious to how this policy is going to impact our campus and if it still pertains to it, also curious about the utensils that need to be either compostable or recyclable, because in my experience compostable utensils do not actually break down because their plastic is too thick at our local facilities. And if they are recyclable, people do not want to sort them out of the rest of the food waste and containers and so the recycling bin gets contaminated or the compost gets contaminated.

**Helen Walsh**

Disability Commission

My name is Helen Walsh, I'm on the commission of disability Berkley. I am speaking on the behalf of the diverse community with people with disability, people with medical conditions and anyone with a disability.

So my focus here is the ordinance of single straws and utensils, which would have to be compostable and be provided only by request. Persons with disabilities who use straws, are also deeply committed to protecting the environment, I am one. Disability rights and environmental protection have long been compatible. People with disabilities want to save the planet but they also need to be able to drink and eat, our food is pureed sometimes. As more and more cities are banning straws, they do not think about the unintended consequences these bans will have on people with disabilities. How will we drink if straws are no longer available? Some might have suggested providing reusable or compostable straws as answers, however metal and wood straws can be dangerous, uncomfortable or ineffective with people with disabilities.

For example, metal and bamboo straws can be dangerous to people with Parkinson's disease because they are too strong, likewise paper straws become soggy over time and can become a choking hazard. Useable straws are generally more expensive than plastic ones. Which is import to note became poverty is more prevalent with people with disabilities. In 2016, nearly 27% of people with disabilities lived below the federal poverty level compared to 10% of none disabled people according to the census bureau.

Until someone creates an appropriate alternative to plastic straws, they must continue to be made available to people with disabilities. They are a simple but necessary accommodation.

**Elizabeth Jordan**

Recently Peet's started offering reusable cups, no straw needed and there less than \$3 and they can also be used at Starbucks. But what they're doing, they're offering discount so every time you go to Peet's and buy something there is a 10 cent discount at the downtown Peets and now it changed. Peet's at the downtown is changing more than the other Peet's, and depending on the neighborhood prices go up or down, so depending on the Peet's you'll get a 5 or 10 cent discount. So I guess why not work on something that will benefit you.

**Clark Mosher**

Hi everyone i was a volunteer and I want to thank everyone for being here. The one concern I have from business owners is that how will they track this, I think there was an assumption that might be refunded by the city, but I think this is just an amazing chance for Berkeley has a chance to lead because our leaders aren't leading. Trump just refuse to sign the G 7 this week I believe which over rules the plastic in the ocean. The midline estimate is 5.3-14 million plastic waste in our ocean each year the visualization that hit home was, imagine 5 plastic grocery bags filled with trash sitting on every foot coast of the world, that's how much plastic is going to into the ocean. Berkley is trying to eliminate any plastic that uses from an average from 0 to 20 min, and I think about all the plastic utensils that we don't even use.

So I'm going to end on a positive note, McDonald's yesterday, announced that its getting rid of all the plastic straws in the UK and Ireland this year, and change is coming. I'm really happy Berkeley has a chance to lead.

**Floy Andrews**

Bay Area CoRoasters & CoRo Coffee Room

I am the CEO of a little company called Bay Area coRoasters & CoRo Coffee Room. We are opening next week, on 5th St. Our cafe is aesthetically beautiful, and so there are a few things that occur to me with this proposal, first I want to say that CoRo is very focused on stability and the goals that the council is working on we totally support. Just sort of listing to the comments, there are a few things I would like to comment on, in high end coffee it's about the amazing coffee flavor and aesthetics of presentation, when you go in and order your drink, the barista is going to do beautiful latte art or pour over or watch them make it, it's all about the full experience. So I don't think that if you're bringing in your mug or Peet's cup or whatever, you'll not be getting the coffee experience that we are providing. I also want to talk about the signage, as we build out this restaurant all these plastic signs that don't really go with what they call exit or here's the all gender bathroom, so the fewer the required signs the better. I also want to ask about is there any outreach to Oakland because I can imagine consumers saying "oh am I going to Berkeley or Oakland for coffee this morning." I do think that plastic is something that we as a species need to tackle for sure, I am wondering if the compostable coffee cups stops the ability to do beautiful latte art, is really the piece of trash that is stopping us to do beautiful latte art?

**Aladdin Sammakieh**

Owner of both Berkeley McDonald's locations (1:14:00)

I'm Aladdin Sammakieh, I recently purchased the two McDonalds restaurants in Berkeley. So I first would like to say your right about the plastic straws In McDonalds in Europe. We are trying to that in the US as well. McDonalds can push the entire industry in one direction, like what they did with cage free eggs, and Styrofoam.

**Frances Schultz**

Indivisible Berkeley

It's clear that we have a plastic crisis, both globally and locally that our plastic footprint in the world is much bigger than we deserve. I support wholeheartedly the efforts of the city, the ecology center, the big water action, everything that you're doing to put together a local solution to that and hopefully one that can be a model for different places that can be used in other places. I applaud the work that you've done already to work with businesses and get their input, I appreciate the input from the businesses that are here today, I know none of these changes are going to be easy for any of us and particularly with businesses, and these are places that are important to us as Berkeley Like local restaurants and stuff. But I also feel confident, with everyone's input we can come up with something that will be minimally difficult for all of us but it can make a big difference in our environment. I really am here to support the effort wholeheartedly, thank you.



**Michael Goldhopper**

Chair of the community Environmental Advisory commission

Hi my name is Michael Goldhopper, I'm the Chair from the community Environmental Advisory commission

We didn't have a good look at this, but on Thursday we had our regular meeting we did approve a letter that has come out to you indicating our support. However personally listening to some of the items and thinking it through, I have a couple thoughts the first one is purely administrative, I think some folks on the panel spoke way too long and this is a very educated group, and knows what's going on, it was unnecessary to give such long introductions. Secondly, I do think that there's a problem, with the fee as it is presently constructed. I know that Alameda County passed the grocery bag fee, which gives everyone the opportunity not having to pay the fee very clearly if they bring something or don't use a bag at all. It is less clear in this ordinance if you choose to not use a cup or whatever that you will have to pay 25 cents, also there is a problem about having it on a receipt because receipts are something that the environmental and others would like to get rid of because they contain PCP, and the danger is especially the workers that have to use them are in jeopardy because they have to use it. Let's put an end to receipts. People mostly throw away or don't want is a sensible solution. I do think that it has to be rethought based on what has said so far including eliminating the requirements in the case of items that cannot be properly handled because they're too hot. I think trying to get larger restaurants to use reusable's should be absolutely mandatory for in-house dining and should be the main thing that you should start with obviously using compostable materials when they are affordable is a good idea but the details of the charge has to be rethought I think.

**Victoria**

I came in a little late so I don't know if this was addressed. I shop at Berkeley Bowl and Whole Foods, and I don't know if this ordinance takes this to account but what's the point of going to the market and bringing a reusable bag and filling it up with 20 plastic bags? I just feel like somehow that has to be addressed. I mean no one really talks about that, I see it all the time. And I don't know if this hearing addresses it or not when you go to the restaurant and they throw in those packets of condiments, little plastic spoons and hot sauce and I have so many of those I don't know what to do with them. I am asking to kind of open your minds to addressing some other things that are really important plastic bags and peoples groceries carts are incredible.

**Anet Howard**

Hi my name is Anet Howard.

15 years ago I went to a trip to the Bahamas. Every single beach was totally clear and beautiful. I never saw one piece of trash and I spent a couple years there. A lot of wonderful places to explore, not one piece of trash. Well it is pretty discouraging when I looked in a magazine and found this article about purging plastic in the Bahamas. They now have a movement called "Bahamas plastic movement" and what they're doing is getting volunteers and all the beaches are cluttered with plastic and they're trying to get rid of it. There gathering and trying to do something with it, but we really need to do something about it. I came across this article, in Japan they have this machine, which distributes to different islands in Japan, and what you do is shove the plastic in the machine and it turns it into gas, then there's this

tube that goes out of it into a tank of water, well that cools the gas and the gas turns into oil. What I'm saying is, it might be easier for us to take all this plastic, heat it up and make oil and somehow make something else with it. Plastic comes in different shapes, sizes, weights and colors, outs really hard to get rid of and I think we need to try to do something about it. That's all I have to say.

**Eun-soo yin**

County of San Mateo

Hello everybody. My name is Eun Soo Yin, I'm actually here representing the county of San Mateo.

I heard about what you guys are doing, congratulations, I commend you on your efforts you guys are doing amazing things. The county is kind of researching about how to dispose of plastic but straws in particular, and so I started doing research about what other cities in the Bay Area are doing. Berkeley came on top of the list as always. Alameda is doing something great, County of Santa Cruz, City of Santa Cruz, Davis, so a lot of movement in this area. Berkeley is definitely not alone but you guys are pioneers in all of ways. And there's a reason I think why a lot of local governments are addressing these issues, as a lot of you guys already know, these are critical issues that we have to really address. So I wanted to come up here to commend you guys and I'm really looking forward to seeing how the ordinance rolls out and I really appreciate the feedback that the public sacrificed your Saturday morning to come here to listen to everyone speak, it was an eye-opening experience for me.

**Danielle Bafone**

Hi my name is Danielle, I'm from Berkeley and lived here for about 25 years. I've had 2 businesses, one a shop and one a school. The last 4 years, I transitioned my work teaching to learning about the marine environment and I do plastic free advocacy, and it feels wild to speak to residents to hear from them what their concerns were. I wanted to thank the City of Berkeley zero waste commission and the ecology center where I've been leading a once a month book group on plastic free and many people know were moving into plastic free world next month. The streets are pretty clean around here but this is still something I was able to pick up. What I wanted to say was, I want to find a way to promote Berkeley zero waste coordinates and my goal as a community is to move towards that, I think this is a individual thing for people to say I don't want use plastic but I think we need to understand as a community that this is a mandate think we're working towards, and not an option thing. This is what's expected of us as citizens. Arguing over paper and plastic straws is not going to be the answer but we all just need to move on.

**Molly Hicks**

Hi my name is Molly Hicks, I'm sorry I missed most of the meeting, all my kids are sick, but I've been doing a lot of volunteer work in the schools about reducing their packaging. Both of my kids go to the newly renamed Silvia Mendes school formerly Le Conte and I've bought in that magazine over there and set up a green team for the kids to work on reducing the amount of plastic, educating each other. So one of the prizes they got was from that same website, I think it says landfill, I gave them a metal cup and a metal straw because kids love to use straws and a lot of the kids told me that they use them, they bring them to the restaurants and show them that we don't want to use plastic, it makes me feel good

that these kids are getting the message and it's so quick for them to understand that they see all the trash on the school yard, they try to clean it up and teach each other. But I don't know if, I just wanted to make everyone aware that the Berkeley schools I feel like are kind of separated from the zero waste ordinances, they don't necessarily comply with the plastic free message. There twice a week, they get cereal individual proportion in plastic cereal bowls, most schools don't even recycle them, and our school got 25,000 this year and that's 1 out of the 11 elementary schools. So my daughter went and filled out an entire bag, one of those large garbage bags in one day and she brought it to the school board on Wednesday and showed them and told them "we don't want this anymore" and explained that can't we just use regular bowls? we can wash them ourselves or even at best use paper and so getting the plastic message its slower because I feel like there's a disconnection that the school board can put a little more pressure on the schools themselves. The custodians kind of feel like it's not their job to do this extra work that they see and were trying to help make the kids see that yes we all have some extra work to do, but it's worth it, because I don't know if that is something you guys already discussed when I was gone, the restaurants for sure but the schools are putting a lot of trash into Berkeley, the plastic cream cheese containers they get every Friday, littering around too, that's all recyclable that's just the little message I wanted to say, thank you.

**Peter Schultze-Allen**

My name is Peter I work in the stormwater field.

Sorry I'm late. Have you already talked about the litter requirement tonight?.... (1:35:01)

That's a big regulation that most of the cities in the Bay Area have to deal with. It's from the Regional Water Board stormwater permit and it says that all the cities have to reduce the amount of litter that's going out into ocean by 2022. The permit is just one of the drivers for the city - it has to do more. The City has installed trash capture devices and has banned plastic bags and Styrofoam so this is another thing that is pushing the City to do more.

I also wanted to mention that I helped draft the ordinance that you all have in front of you, so all this summer we were trying to do outreach to the business community and talk to them about it in various different ways; the survey was a very big effort. I talked to just one business - a cafe owner in Berkeley who also serves coffee at the farmers market. He says that he pays 30 cents for each of these special disposable and compostable hot cups and that he wanted these cups because they are the best; it is a double walled cup with a compostable bio-plastic liner so it's basically the top level, most compostable, disposable paper cup that you can get but it's very expensive - 30 cents each. So since this ordinance can help him cover the expense for these cups, he was in favor for the ordinance. Of course he prefers everyone to drink the coffee in the store where he can provide a reusable ceramic and washable cup. He doesn't want people using the to-go cup - the in-house dining option is more sustainable. If other businesses are paying 5 cents for a non-compostable single use paper cup, that's not sustainable and they are kind of getting away with that right now. Under the proposed ordinance there would be a level playing field because everyone would have to use a similar compostable to-go cup, so I think that's one of the benefits.

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Thomas Gregory

**Sent:** Thursday, June 14, 2018 2:01 PM

**Subject:** Re: Public Input Session Hosted by the Zero Waste Commission's Foodware Subcommittee re Single-use, Disposable Foodware

Hi Heidi,

The Center for Independent Living (TheCIL) is the Title-VII-of-the-Rehab-Act disability services and advocacy agency whose federally designated catchment is northern Alameda County.

Approximately one year ago, my boss (TheCIL's executive director, Stuart James) sent a message to each of Berkeley's City Council Members containing the language pasted immediately below. I'm now sending you the same message hoping that it will inform any deliberations/actions by the Zero Waste Commission.

Best,  
Thomas

Thomas Gregory  
Deputy Director  
Center for Independent Living

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Dear Berkeley City Council Members:

On behalf of the Center for Independent Living (TheCIL) and the disability community we serve, I am writing in regards to the drinking straw proposal highlighted in this Berkeleyside article: <http://www.berkeleyside.com/2017/06/06/know-berkeley-straw-ban-proposal/>.

The board and staff of TheCIL applaud your ongoing efforts to protect environments in Berkeley and elsewhere. Just like responsible citizens without disabilities, responsible people with disabilities recognize the importance of maintaining (or, better yet, increasing) our planet's health. In fact, the disability community arguably has a heightened interest in environmental integrity as toxic environments can exacerbate disability-related medical conditions and can even, in some cases, lead to the acquisition of disabilities. So we appreciate the City's consideration of a city-wide plan to reduce or eliminate the use of disposable plastic straws. We also appreciate that the City is inquiring into the impacts of an anti-straw measure before implementing such a measure.

It's important to recognize that, for some people, the use of straws is a necessity. Due to deficits in manual dexterity and various other factors, a significant number of folks require straws to drink beverages. It is important that Berkeley, as it moves forward with any plan, remember the needs of its disabled residents and to accommodate those needs. Specifically, I am urging the City to ensure that any measures implemented will involve restaurateurs and other beverage vendors providing straws to those who purchase beverages and need a straw to independently access a beverage. We at TheCIL feel that it is essential that people who rely on straws (including those who do not happen to have a straw in their possession at any given time) be able to access beverages while out in the community and be able to do so with the same degree of convenience as everyone else.

As the Berkeleyside article makes clear, there are various ways that Berkeley could reduce or eliminate the use of disposable plastic straws while simultaneously accommodating the needs of those for whom straws are not a luxury. "Soft bans," biodegradable disposable straws, and reusable steel straws are some potential solutions mentioned in the article. Although we are not currently advocating any particular solution, we are urging the City to ensure that those who need straws will continue to have access to them.

Again, thank you for your efforts, and if there is any way that TheCIL could assist the City in its approach to this issue, please do not hesitate to contact us for any input you might desire.

Sincerely,

Stuart, Executive Director at TheCIL

**Community Environmental Advisory Commission (CEAC) Written Comment on the proposed Single Use Foodware and Litter Reduction Ordinance**

**From:** Michael Goldhaber

**Sent:** Friday, June 15, 2018 1:54 PM

**Subject:** CEAC support for Proposed Ordinance on Foodware

To all concerned,

At its meeting last night, CEAC voted unanimously to support the ordinance prepared by the special subcommittee of the Zero Waste Commission.

While it may need minor modifications, we believe the proposed ordinance does an excellent job of balancing environmental and public needs in a way largely fair to all.

Best,

Michael

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Michael H. Goldhaber, Chair, CEAC

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Michael Goldhaber

**Date:** June 16, 2018 at 3:53:13 PM PDT

**Subject:** comments on ZWC proposed food-container ordinance

Dear ZWC, Councilmember Hahn, and Mayor Arreguin,

I attended today's public hearing on ZWC's proposed Berkeley Single-Use Foodware and Litter Reduction ordinance. As I wrote to Councilmember Hahn and Mayor Arreguin, CEAC voted last Thursday to favor the ordinance.

However, after listening carefully to the presentations and especially the public comments at the meeting, I have revised my personal views as follows:

1. The plastic waste problem must be solved. That is vitally important. Berkeley has an opportunity to set a wide example.
2. The current draft ordinance approach, while seemingly sensible, is in fact not properly thought through at all. It puts the burden on restaurants in the city, but not on larger entities that send pre-packaged food into the city nor on consumers or garbage collectors to do a proper job collecting and sorting waste. Even with compostable utensils, as the waste stream is presently constituted, the burden is on each citizen to be ecologically aware, to take the time to understand the different categories of waste and to make the proper separations. It goes without saying that, while many will do their best to comply, some of those will make mistakes much of the time, and others will not even bother to take on the added responsibility, rather than tossing waste, if not willy-nilly, then into the wrong containers. My own wife, for example, while always trying to comply, is simply not nerdy or compulsive enough to do it right a good percentage of the time. Many others simply refuse to spend the time.

The solution is for the city and the ecology center to take on more of the job of waste separation. This may be an added burden on the city, but it would ultimately simplify collection and improve the waste stream. It is unrealistic to expect many citizens to bother with the three (or really, four) bins as it is. Martin Bourque, the Ecology Center Executive Director, at the meeting, himself pointed out that consumers largely ignore waste categories when taking the trouble to dispose of items even right in restaurants, even when there are illustrative pictures present to guide them. I have often observed

the same with regard to the too-rare garbage cans the city provides on streets and in parks.

3. Another proposal in the ordinance that was not thought through is the \$.25 charge for disposables that restaurants are to tack onto bills and receipts. Is a dish for a single scoop of ice cream rationally to be considered equal to an entire take-out meal in multiple containers? Further, the analogy with Alameda County's single-use grocery bag charge does not actually work. People who normally carry around capacious knapsacks or purses would be able to carry a coffee cup or the like, but others who travel lighter are unlikely to have a cup with them should they decide they need a beverage. Carrying one's own reusable utensils or meal containers becomes even more problematic, including sanitary concerns. The increasing number of delivery services for restaurant food also can hardly be expected to operate without disposables; there is already a substantial charge for such services, so a disposable charge wouldn't be noticed.

4. A little more about pre-packagers outside the city: As some of the commenters at the meeting noted, the current draft doesn't have any way of policing those suppliers who ship snacks and meals into Berkeley from beyond city limits. Almost every grocery store or deli is full of such items, and so are many chain restaurants. If local businesses are not to suffer unduly, that inequity needs confronting.

5. Because restaurant receipts, as presently offered, mostly contain biphenyls that are suspected of causing endocrine disruption, we should not encourage their use. As it is, many customers don't even take or glance at them anyway. A better educational device is needed.

6. Finally, let me repeat what I said at the meeting: When holding a public hearing on a proposal that is likely to attract only those already well-informed on the substance, lengthy introductory lectures are not needed. People's attention is a valuable resource that the publicly minded should try not to misuse.

Thanks for your attention to this.

Best,

Michael H. Goldhaber, Berkeley Resident



## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

Submitted by Helen Walsh, Diverse Disability Media  
June 16, 2018

### Plastic Straws and persons with Disabilities (PWDs:

- Area of concern for PWDs on the Berkeley Draft Ordinance: **Single use straws, utensils, and stirrers (which will have to be compostable) be provided only “by request.**
- Persons with disabilities who use straws are also deeply committed to protecting the environment.
- Disability rights and environmental protection — have long been compatible.
- People with disabilities want to save the planet. We also need to be able to drink and eat.

As more and more cities and states seek to ban straws and have, It is concerning about the unintended consequences these bans have on people with disabilities.

- How will PWDs drink and eat if straws are no longer available or accessible and safe for us to use?
- How will businesses in the city of Berkeley serve PWDs if they are not informed about accessible cost effective straws that PWDs can utilize safely and successfully?
- Some have suggested providing reusable or compostable straws as the answer. However, “metal, wood, or glass straws can be dangerous, uncomfortable, or ineffective for [some people with disabilities].” PWDs are very concerned about this issue now because PWDs in areas plastic straws are banned are being excluded from the community they participate and work in.

For example, metal and bamboo straws can be dangerous for people with Parkinson's disease because they are too strong. Likewise, paper straws become soggy over time, which can become a choking hazard.

Reusable and compostable straws are generally more expensive than plastic ones, which is important to note, because poverty is more prevalent among people with disabilities; in 2016, nearly 27 percent of people with disabilities lived below the federal poverty level compared with 10 percent of non-disabled people, according to the U.S. Census Bureau.

- Until someone creates an appropriate alternative to plastic straws, we cannot ban plastic straws.
- Including persons with disabilities in every step of the process will provide full inclusion of the community as well as provide the city of Berkeley to be the leader of what it means to be an inclusive and accessible city.

The city of Berkeley has the opportunity to be inventive in regards to an environmentally accessible inclusive and cost effective straw.

- Straws are a simple but necessary accommodation. That said, we should not and cannot give up on trying to reduce our plastic use, and I fully support cutting down on our use of plastics.
- People with disabilities want to save the planet. We also need to be able to drink. These two positions do not have to be mutually exclusive. Banning plastic straws prior to providing an accessible/inclusive straw is not a solution to the plastic waste issue.
- Including PWDs in the process will benefit all. PWDs have an ability to provide the city of Berkeley information or invent the straw that is both cost effective and accessible/inclusive. Our "wheels are needed" at your table. You'll like the "way we roll" beside during Ed Roberts time the city of Berkeley did :)

**Written Public Comment on the proposed  
Single Use Foodware and Litter Reduction Ordinance**

**From:** Laura K Fujii

**Sent:** Sunday, June 17, 2018 4:15 PM

**Subject:** PASS and IMPLEMENT the Berkeley Disposable Foodware and Litter Reduction Ordinance

Dear Berkeley City Council and Zero Waste Commission:

I care deeply about the significant threat to our health and the health of our environment from the local and global plastics crisis. There is both a local and global plastics crisis. We must do more to remove single-use plastics from the waste stream, encourage the use of biodegradable and reusable products, and strongly discourage excessive packaging.

Berkeley should be a leader. As a consumer and as someone who cares about the oceans, wildlife, and the safety of our food and water, I strongly support the proposed Disposable Foodware and Litter Reduction Ordinance.

Funds earned from the charge of \$0.25 for every disposable beverage cup and disposable food container provided by vendors should be used to fund a Berkeley Zero Waste Campaign and Education program and to help support implementation of the Ordinance.

I urge you to pass and implement this urgently needed environmental and health ordinance.

Thank you.

Laura Fujii

Berkeley, CA. 94706

**Public Comments on the Single Use Foodware and Litter Reduction Ordinance heard at the regular meeting of the Zero Waste Commission on June 25, 2018**

**8 Public Comments.**

**Notes summarizing the spoken public comments:**

1. Sheera Leeder – Berkeley Resident
  - Has a disability that requires her to use straws and cups with lids
  - Many people with disabilities are on a low income and can't afford extra charges
  - Possible solutions: reusable straws, compostable straws, paper straws
  - Supports an on request ordinance
  - Note: Sheera submitted written public comments to the Secretary to elaborate on her concerns, and to provide possible solutions, regarding plastic straws and cups with lids
  
2. Farhad Salehian – DishJoy (Dishwashing Service)
  - Dishwashing and delivery company
  - They provide intelligent solution to world problems – reduce disposables by utilizing dishwashing of reusables
  - Supports ordinance
  - This ordinance can make Berkeley a model for the world
  
3. Max – Urban Ore
  - Opportunity for UC Berkeley outreach/education
  
4. Miriam Gordon - UpStream
  - Need to consider how to create an easier BYOC system
  - Pilot program on Telegraph – TBID
  - Need guidance document and feasibility study for BYOC program
  - Consider possible tax break for providing a reusable program
  - Need best management practices for refilling containers
  - Possibly a phased approach to charge for foodware
  
5. Martin Bourque – Ecology Center
  - Provided an update on plastics (relevant to plastic foodware)
  - Non-bottle mixed plastics are problematic: #5 PP dairy tubs have the most valuable
  - Currently no market to recycle PETg plastic clamshells (brittle/thermoform)
  
6. Jack Macy – SF Department of the Environment
  - Strong support for ordinance
  - This is a way to deal with the tsunami of disposable plastics
  - This is a logical next step after the plastic bag reforms. Providing items on request can reduce use by 50-90%

- Businesses can potentially save money
- The market responded to the Styrofoam ban
- 75% of businesses supported charging if they can keep the money
- 75% support from customers
- \$0.25 is the threshold for behavior change
- This is something that can work
- Jack offered to be a resource to help

7. Helen Walsh

- Has a disability
- People with disabilities are environmentalists
- Need to include the disability community
- Cost effective solutions are available
- Inclusivity is important
- The disability community can help solve the problem

8. Thu hà - Cheeseboard Collective

- They are looking for alternatives to landfill disposables
- They would like assistance to find good compostable products

Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance Received at the June 25, 2018 Zero Waste Commission Meeting

## Zero Waste Commission Public Comments on Its Planned Ordinance Banning Plastic Straws and Charging 25 cent for Cups and Lids

My name is Shira Leeder and I am long-time disability advocate and Berkeley resident. I am here to discuss my concerns and solutions regarding plastic straws and cups with lids.

Most people with disabilities live on a low fixed income, such as Social Security Disability, so 25 cent per cup and lid adds up to a punishing percentage of their monthly budget. My biggest objection, however, is not the cost. People with certain disabilities cannot eat, drink, or take medications without the help of straws. Children and the elderly also rely on straws.

I am one of those people whose disability requires me to use straws and cups with lids.

If I have to carry a reusable cup with a lid, I will be less independent in my daily life, because I will have to either ask a stranger to help me fill up the cup, or I will have to pay someone to stay with me all day to make sure my reusable cup is filled up at all times. Of course, the cost of the latter course is prohibitive.

While I am all for creating an environmentally conscious City of Berkeley and reducing the amount of plastic that land and sea animals are exposed to, I do not want to do so at a cost to the disabled, the elderly, and children. It is simply not realistic to expect these groups to carry plastic straws with them at all times. We at the Center for Independent Living therefore feel that it is essential that plastic straws continue to be available at coffee shops and restaurants.

As the article in Berkeleyside makes clear, there are various ways that Berkeley could reduce or eliminate disposable plastic straws while simultaneously accommodating the needs of those for whom straws are not a luxury. "Soft bans," new biodegradable disposable straws, and reusable steel straws are some possible solutions mentioned by Berkeleyside. Also worth considering is the old-fashioned paper straw (assuming these are still being manufactured).

Perhaps coffee shops and restaurants could make plastic straws available only on request, as they did with glasses of water during the drought.

Thank you all for listening and thinking over this important issue.

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Sincerely,

Shira Leeder

Disability Advocate and Berkeley Resident

More Alternative Solutions:

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### **Reusable Plastic Straws:**

For those for whom it is practical to carry around a straw, it's time to bring back the curly, brightly colored plastic straw from your childhood. Cleaned and stored properly, they can last for years.

### **Collapsible reusable straw: £14.35, lifetime use**

Some of us already have our own glass or paper straws at home, but what happens when you're out and about?

Created by Emma Cohen and Miles Pepper of Canada, the FinalStraw is the world's first collapsible, reusable straw that folds down into a case small enough to fit on your keychain.



## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Michael Katz

**Sent:** Friday, June 22, 2018 12:23 PM

**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>; Berkeley Mayor's Office  
<mayor@cityofberkeley.info>

**Subject:** Single-use food container ordinance: Please exempt compostable containers from surcharges

Dear Mayor Arreguin, Councilmember Hahn, and City Staff,  
I've received several invitations for "input" sessions and opportunities regarding this proposed ordinance, but almost no details from the City on what would be considered "disposable." Here's my best attempt to respond with usable input:

I strongly support incentives that would discourage the distribution of materials that cannot be composted or recycled. Plastic straws definitely fall into this category. To my knowledge, so do most plastic lids for take-out containers: Although they're stamped with plastic grades (like "/1\" or "/6\"), this is misleading, because they're too flimsy for recyclers to process.

(The above information comes from a friend who used to run a plastics-recycling company. Please excuse any errors.)

I urge caution in establishing incentives rewarding "compostable coffee stirrers." Wooden coffee stirrers make some contribution to deforestation, and I have that (given cost pressures) many are sourced from tropical hardwoods. If there's a corn-based compostable alternative here, that's what Berkeley should really be encouraging.

Most importantly, I strongly oppose the prospect of a \$.25 charge on compostable take-out containers. Given contemporary pressures on working people's time (from always-on employers, housing costs, etc.), take-out food containers have become a de-facto necessary part of our lives.

It's not practical to expect people to have the forethought or carrying space bring their own take-out containers to restaurants. People doing so might also trigger sanitary concerns or violations for the restaurants. (I'm saying this as someone who used to routinely bring my own plastic "Chinese take-out box" to my favorite take-out spot, and who gradually talked them into filling it instead of a single-use container.)

For these reasons, I think it's valuable for the City to create incentives for single-use containers to be compostable. But slapping a \$.25 charge on compostable containers strikes me as the kind of action that exposes Berkeley to ridicule rather than respect: It would change hardly anyone's behavior, except to perhaps discourage patronizing Berkeley restaurants. But it would impose one more regressive tax on people who are already economically stressed.

Thank you for considering these comments.

Respectfully yours,  
Michael Katz  
Berkeley, 94709

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Christina Tarr  
**Sent:** Tuesday, July 03, 2018 9:30 PM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** single use plasticware

Dear Commissioner,

I am writing to express my strong support of the proposed Disposable Foodware and Litter Reduction Ordinance

I oppose disposable plastic food ware because globally, single-use disposable foodware is contributing to plastic pollution in the world's [oceans](#), [drinking water](#), and [food](#). According to the Ecology Center, 80% of plastic found in the ocean comes from land-based sources. [Shoreline Cleanup](#) volunteers collected 5,826 food wrappers; 2,156 straws and stirrers; 1,577 forks, knives, and spoons; and 3,269 foam packaging items from Berkeley, Albany, and Emeryville shorelines in 2016. The [World Economic Forum](#) estimates that 150 million tons of plastic are already floating in the world's oceans – with an additional eight million tons entering the water each year. It is [estimated](#) that by 2050 there will be more plastic than fish in our oceans by weight. Worldwide, single-use packaging is the biggest source of trash found in or near bodies of water, according to the Ocean Conservancy, which also says that plastics are believed to threaten at least [600 different wildlife species](#). Ninety percent of seabirds, including albatross and petrels, are now eating plastics on a regular basis. By 2050, that figure is expected to [rise to 100 percent](#). In addition, evidence suggests that humans are consuming plastics through the seafood we eat.

In addition, plastic is created from petroleum products, and to combat climate change, the less petroleum we use, the better.

The proliferation of plastic is a horrible problem, and in this case, completely unnecessary. There is no need to use plasticware for dine-in use, and for take-out, compostable is available. Many restaurants I frequent have already implemented this, so clearly it is possible.

With the current federal administration, we need to step up our game at the state and local levels. We can't count on the federal government to lead the way, and we also can not afford to wait for a better administration. We need to act quickly to protect our environment.

Thank you very much,

Christina Tarr  
Berkeley, 94709

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Rainbow Rubin

**Sent:** Tuesday, July 03, 2018 9:57 PM

**To:** cdetournay@comcast.net; Obermeit, Heidi <hobermeit@cityofberkeley.info>; City Clerk <clerk@cityofberkeley.info>

**Subject:** Ban Single Use Plastic

Dear Sir or Madam,

There is both a local and global plastics crisis. We must do more to remove single-use plastics from the waste stream, and Berkeley should be a leader. As a consumer and as someone who cares about the oceans, wildlife and the safety of our food and water, I support the proposed Disposable Foodware and Litter Reduction Ordinance.

Thank you,  
Rainbow Rubin

--

Rainbow Rubin, PhD MPH  
Berkeley, CA 94703

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**From:** Linda Zagula

**Sent:** Wednesday, July 04, 2018 11:05 AM

**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>

**Subject:** Support Single-use Foodware and Litter Reduction Ordinance

Hello,

We are in the midst of both a local and global plastics crisis. It's crucial that we do more to remove single-use plastics from the waste stream, and Berkeley should be a leader. As a consumer and as someone who cares about the oceans, wildlife and the safety of our food and water, I support the proposed Disposable Foodware and Litter Reduction Ordinance.

Thank you,

Linda Zagula  
Berkeley, 94702

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Janet Byron  
**Sent:** Sunday, July 08, 2018 8:13 AM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** Reducing single-use food waste

Hi Heidi,  
I strongly support the proposed ordinance.  
Thank you for receiving my opinion.

Janet Byron  
Berkeley, CA

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Sent from Gmail Mobile

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-----Original Message-----

**From:** Victoria K. Williams  
**Sent:** Monday, July 09, 2018 2:06 PM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** Support Disposable Foodware and Litter Reduction Ordinance

Dear Heidi Obermeit,

I'm writing to you as Secretary of the Zero Waste Commission say that there is both a local and global environmental crisis because of the persistence of plastics in our rivers and oceans. We must do more to remove single-use plastics from the waste stream, and Berkeley should be a leader in this effort. As a consumer and as someone who cares about the oceans, wildlife, and the safety of our food and water, I urge you to support the proposed Disposable Foodware and Litter Reduction Ordinance.

Thank you,

Victoria K. Williams  
Berkeley and Richmond

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On Jul 9, 2018, at 12:44 PM, Lisa Dietz <[lgdietz@yahoo.com](mailto:lgdietz@yahoo.com)> wrote:

Dear Chairperson,

I wanted to let you know that I support this ordinance. I am unable to attend Thursday's meeting to tell you this in person, but I would be very happy to pay more for compostable take out foodware and would hope that Berkeley could be one of the leaders in this endeavor to stop the explosion of plastic waste.

We all learned how to bring our bags with us to the grocery store. I think we can learn to carry our sporks in a pocket and wipe them clean with a (small) paper napkin.

Lisa Dietz  
Berkeley, 94705

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** RICK MOTAMEDI

**Sent:** Tuesday, July 10, 2018 10:31 AM

**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>; City Clerk <clerk@cityofberkeley.info>;  
cdetournay@comcast.net

**Subject:** In SUPPORT of the Disposable Foodware and Litter Reduction Ordinance.

Ms. Obermeit and Ms. De Tournay,

We are writing in support of a ban on single-use plastic products. There is both a local and global plastics crisis and most of these plastic products are convenience items that are not necessary. We must do more to remove single-use plastics from the waste stream, and Berkeley should be a leader. As consumers who will support Berkely businesses who step up and as parents who care about the oceans, wildlife and the safety of our food and water, we support the proposed Disposable Foodware and Litter Reduction Ordinance.

Thank you,

Richard & Carrie Motamedi

June 9, 2018

City of Berkeley  
Zero Waste Commission  
Berkeley, CA

Dear Commissioners,

The California Restaurant Association is the definitive voice of the food service industry in California and is the oldest restaurant trade association in the nation. On behalf of our restaurant members in Berkeley, we respectfully submit this letter to voice our strong concerns regarding a proposed ordinance to ban all single-use food ware for dine-in patrons.

Not allowing food service establishments to use disposable food service ware would negatively impact the ability of restaurants, cafeterias, delis, coffee houses, and other food/beverage establishments to offer many recyclable or compostable options for food ware. We believe this ordinance could result in unintended environmental impacts. Presumably, with increased use of reusable food service ware we would then see an increase in other utility usage and associated costs. Since reusable food service ware must be cleaned and sanitized, this results in increased water and energy usage.

Furthermore, encouraging the use of reusable food packaging poses serious health and safety concerns. If a customer were to bring in a reusable cup, straw, or Tupperware container to a restaurant that isn't properly sanitized, it encourages the transfer of foodborne illnesses through these products and can spread throughout the entire restaurant.

In this ordinance, there is a clause that grants a restaurant with space limitations for installing extra dishwashing and sanitizing appliances a three-year grace period to accommodate the necessary appliances to handle a change in dishwashing and sanitizing. Most restaurants operating in the City of Berkeley are small businesses that lease older buildings with limited square footage. Square footage of established buildings will not change, no matter how much time is granted. Since square footage is fixed and cannot fluctuate, attention must be paid to those who do not have room to install extra appliances.

In addition, imposing a take-out tax on cups and to-go containers is a regressive tax with larger implications for consumers. A take-out tax will negatively affect low income residents of Berkeley which sets a concerning precedent in a forward-thinking City Council.

We agree that manufactures and end users of disposable food service products certainly play an important role in reducing waste and addressing litter abatement. However, once the product leaves the restaurant establishment, it is up to the consumer to ensure that it is disposed of – or recycled/composted properly. A shared responsibility approach is necessary if the City of Berkeley is to make a real and lasting impact on the amount of material that is used.

Thank you for considering these points. Should you have any questions regarding our objections to elements of this proposal, please contact me at (650) 288-8235 or [apiccoli@calrest.org](mailto:apiccoli@calrest.org).

Sincerely,

Alison Piccoli

A handwritten signature in black ink that reads "Alison Piccoli". The signature is written in a cursive, flowing style with a large loop at the end of the last name.

Director, Local Government Affairs – Bay Area Region  
California Restaurant Association

July 12, 2018

**Special Meeting of the Foodware Subcommittee to solicit public input on the proposed Single Use Foodware and Litter Reduction Ordinance**

**11 members of the public attended; 6 public comments.**

**Notes summarizing the spoken public comments:**

1. Anonymous Commenter (note taker didn't catch name)
  - In favor of the proposed ordinance
  - Current system is unacceptable
  - City-wide approach is best – more efficient/faster than relying on individuals
  - People are busy and wont always remember to bring reusables
  - The fee helps people realize that the disposable foodware item takes resources and creates waste that ends up in the landfill
  - Will promote social change in how people see disposables
  - It will make it less weird to Bring Your Own Container (BYOC); it normalizes it
  
2. Helen Walsh
  - People with disabilities agree with the environmental approach
  - There is a difference between convenience and a tool when it comes to persons w/disabilities, the elderly, children, people that have medical issues
  - Should make a consideration in regards to straws for people with disabilities
  - Important to provide businesses with alternatives
  - Compostable straws put businesses at a disadvantage
  - There is no current solution
  - Work with the disability community – engage with people with disabilities
  - We are environmentalists with disabilities
  
3. Alison Piccoli – California Restaurant Association
  - Concern from restaurants regarding the ability to sanitize customer's containers if BYOC
  - Concern regarding germs transferring to serving utensils
  - Concern about fee for disposable foodware
  
4. Meri Sol - StopWaste.org
  - Concern about the inclusion of bags in the definition of “disposable foodware” because there are discrepancies in the language between the County's Reusable Bag Ordinance and the City's proposed Single Use Foodware and Litter Reduction Ordinance
  - This is the most forward thinking policy on reducing foodware out there
  - It is groundbreaking to insist on reusables for dine-in
  - Charges will encourage behavior change



- Should consider how to take the burden off of individuals to BYOC
- It would be better to have reusable containers available for customers
- If reusables are available in the restaurant, it wont slow down the serving line as could happen with customers bringing their own containers
- It needs to be easy for customers to drop off dirty reusables (cups and containers)
- Meri mentioned after the meeting that she will provide detailed written recommendations prior to the Sept. 24 meeting

5. Annie Farman – Plastic Pollution Coalition

- In favor of ordinance
- It is groundbreaking
- Impact would be similar to plastic bag ban
- Support a city-wide reusable container program
- Lots of businesses have cited operational concerns with BYOC
- Consider tax breaks for reusable container system

6. Jessica – GreenFire Law

- In favor of ordinance
- Should include a separate provision to include an education component/include educational funding in the Ordinance language

**Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance**

**From:** stuart@telegraphberkeley.org [mailto:Stuart@telegraphberkeley.org]  
**Sent:** Thursday, August 30, 2018 4:47 PM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** Summary of comments to the proposed ordinance

Hi Heidi,

Here you go Comment, followed by author: We received 4 comments in addition to Marlem's from Taco Sinaloa--which you have.

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I want to prioritize voices from the disabled community in this discourse that were [systematically silenced in the implementation of equivalent straw bans across the country](#).

Otherwise, no particular qualms either way — this is clearly a patchwork solution and needs to be paired with larger-scale reforms minimizing Berkeley's impact and emphasizing our community's voice in the larger conversation about systemic climate solutions.



Jeff Noven, Executive Director [ED2](#) (he/him)  
Berkeley Student Food Collective  
2440 Bancroft Way #102  
Berkeley, CA 94704

---

Fully against this ordinance, labor cost is already killing us and these additional costs to us or the customers will not sit well

Danny Rodriguez  
[danny@smokespoutinerie.com](mailto:danny@smokespoutinerie.com)

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We echo what others are saying. Recently we increased our prices due to anticipated increase in minimum wage and rising food cost. More pass on of cost to customers will significantly impact our business. We think that adding/having a compost bin would be a better solution!

Thank you for considering!  
Sharon Chung  
Poke Bar Berkeley

---

The City should research ways to help the merchants not set them back. Before us merchants add anymore cost to our operations. The city should focus on providing a clean and safe public area. One of our vendors parked over by peoples park and got their car window broken. We had some guy sit in front of our store wrap his arm and shoot up drugs into his arm. A BPD was driving by saw what was happening and kept driving. We have bigger issues. Processing waste for merchants is already extremely expensive. If anything merchants should be receiving some sort of financial support from the cities waste management especially since Berkeley merchants can't outsource waste services. I will be attending the meeting.

Does the City have any sort of Merchant support program? The reason I ask is simply because I personally don't see any sort of assistance towards merchants.

- Rents are extremely high
- Labor is high
- Parking is extremely expensive if you operate a business.
- Parking tickets are a joke & 20 minute yellow parking is a bigger JOKE! – Parking plus parking tickets = about \$26k annual for our team.
- Waste disposal cost are insane. Just for refuge services we spent around \$36k annually. This is not including \$4k we spend on composable garbage bags. We cant even get a second quote for refuge because the only refuge service allowed in Berkeley is its own (can we be the only pizza in Berkeley?) which is BS.
- The City itself is failing apart with an increase number in street people, human waste, paraphernalia, garbage, and it is not safe. Who would want to bring their families to spend a weekend in Berkeley? Just getting off the freeway on University is embarrassing for the City. It is so difficult as a merchant to produce a sale. Now try doing it under these conditions. Its mind boggling to me how North Berkeley does not have any of the issue I list about or at least to the extreme we see it on a daily. When we call 911 their reaction is negative as if we are a nuisance and don't take our calls seriously. We have had street people spit on us, vandalize our store, vomit and shit in our restrooms, threaten to kill our employees, etc.. But again, I don't see these issues in North Berkeley. I would love for someone at the city to analyze the difference and explain.
- And lets not touch on the process of permitting within the City (insane!)

So, back to my original question. What does the City of Berkeley do for its Merchants?

Eduardo Perez  
Sliver Pizza

--

**Written Public Comment on the proposed  
Single Use Foodware and Litter Reduction Ordinance**

Tacos Sinaloa

2384 Telegraph Ave Berkeley

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

August 25, 2018

Dear Zero Waste Commission,

I am writing with some concerns in response to the proposed waste reduction ordinance. Although Tacos Sinaloa fully supports initiatives to reduce waste there are some concerns I would like for Zero Waste commission to consider in the drafting of the ordinance.

**Concern:1 Take out Restaurants /small restaurants**

**Food consumed onsite: reusable dishes**

Will the proposal exclude take out restaurants ?

Will the proposal exclude small restaurants who don't have the space to accommodate high volume dish washing (no space for dishwashing appliances or an additional sinks)

**Concern : 2 Cost to invest on reusable dishes**

**Concern: 3 Timing of the ordinance**

With minimum wage set to increase to \$15 in October,2018 having restaurants invest in reusable dishes, appliances, need for additional employees to perform dish washing duties will pose an economical burden on small businesses .

**Concern 3: cost to customers**

Telegraph restaurants like ours who serve mainly college students would like to avoid passing on an additional charge to customers.

**Concern 4:** encouraging customers to bring reusable containers and cups pose a food safety concern that can negatively increase mislead food contamination complaints. Without the ability for restaurants to control dinnerware sanitation restaurants cannot control for food contamination.

I recommend the city helps find vendors that can provide inexpensive compostable dinnerware instead of encouraging the use of reusable dinnerware from home. Having a list or contract with vendors will assist restaurants in the transition of using compost only takeout dinnerware.

Sincerely,

Marlem Bueno, Tacos Sinaloa Manager



# Friends of Five Creeks

*Volunteers preserving and restoring watersheds of  
North Berkeley, Albany, Kensington, south El Cerrito and Richmond since 1996  
1236 Oxford St., Berkeley, CA 94709  
510 848 9358 f5creeks@gmail.com www.fivecreeks.org*

August 29, 1918

Heidi Obermeit, Recycling Program Manager  
Members of the Berkeley Zero Waste Commission  
Berkeley City Clerk, Members of the Berkeley City Council

Members of the Zero Waste Commission, City Clerk, City Council, and Ms. Obermeit:

Friends of Five Creeks, a 22-year-old all-volunteer group supporting watersheds and nature in the East Bay, strongly supports the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance. Litter and pollution remain serious problems in local waterways, and this ordinance will be a major milestone in reducing our dependence on disposable goods.

In our 22 years of work as community volunteers restoring and caring for our creeks, we have seen first-hand the persistent amounts of harmful litter along our creeks and their outfalls into the Bay, largely due to food containers and to-go materials. On 2017's Coastal Cleanup Day, volunteers picked up 3,761 lbs. of trash, including 24,284 small plastic pieces, 7,241 food wrappers, 2,505 straws and stirrers, and other litter, along the shorelines of Emeryville, Berkeley and Albany, where birds and fish feed. In turn, as of 2017- 18 there is more microplastic pollution in SF Bay than in many other US bodies of water (three times concentrations in Lake Erie).

Even the seemingly less harmful manufacture of paper cups nationally produces 2.2 billion tons of waste and 4 billion tons of CO2. At the same time, recycling has become less possible or cost-effective. As the Center for Environmental Health states, "single-use foodware is ... a non-sustainable option even if the materials are compostable or recyclable." This measure, and future possible increases in its coverage, would significantly return to re-use practices.

Many community members are as concerned about this problem as we are, and welcome ways to begin to tackle it. This ordinance will do just that. Many local businesses also support this measure; the \$.25 charge for disposable foodware seems fair and feasible.

Friends of Five Creeks looks forward to joining with the City of Berkeley on Coastal Cleanup Day on September 15, 2018 -- and to seeing how much this ordinance achieves in reducing litter and pollution in urban runoff, local creeks, and the Bay next year.

Sincerely,

Susan Schwartz, President, Friends of Five Creeks

*Friends of Five Creeks is a partner project of 501(c)3 Berkeley Partners for Parks*

## Written Public Comment on the proposed Single Use Foodware and Litter Disposal Ordinance

Sent: Tuesday, July 17, 2018 11:16 AM  
Subject: My family's support for the proposed Single-use Foodware and Litter Reduction Ordinance

Dear Ms. Hobermeit,

Just wanted to you to know that although I am rehabbing from surgery and couldn't attend the July 12 meeting, my family and I still strongly support the proposed ordinance.

Yours truly,

Melanie Lawrence  
Allston Way

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**Sent:** Saturday, July 28, 2018 10:06 PM  
**Subject:** City of Berkeley Single Use Foodware and Litter Reduction Ordinance

Hello,

Very happy to see this effort happening and it also seems like a particularly easy problem to solve. I will suggest my obvious solutions mostly

as reinforcement for what is probably already on the minds of many other people. Only paper based materials used (yes paper comes from trees

but it is a rapidly renewing resource and usually compostable or recyclable and not a pollutant in landfills). Any plastic for forks, spoons etc. must

be of the compostable/recyclable variety. The city should approve manufacturers of these goods and make a list available of supply companies who are interested in providing the goods for merchants.

Merchants should also be encouraged to allow customers to bring in their own containers to pick up take out food. Customers should be encouraged to start

or continue cooking at home to save money, resources such as packing materials and to likely cut down on automobile traffic. Perhaps cooking programs at local community colleges can be enhanced and expanded.

Thank you for your efforts and allowing people to provide input and encouragement.

**Kasra Kamooneh**, President / CTO  
Certified Green Building Professional

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**Sent:** Sunday, July 29, 2018 10:43 AM

**Subject:** Re: September 6th @ 6pm - Invitation to provide input on the proposed City of Berkeley Single Use Foodware and Litter Reduction Ordinance

Hi!

I am a former restaurant owner in Berkeley. I would say I am definitely an environmentalist. My companies have been certified green for the last 10 years by the county of Alameda.

The restaurant business is under siege right now with limited labor availability, rising labor costs, and rising food costs. Many restaurants are on the verge of closing or have already closed.

Do not pick on restaurants right now. The timing is horrible. If anything, offer some kind of tax credit or incentive for following these guidelines rather than a law that puts more financial pressure on restaurants.

Sincerely,  
Hugh Groman

Follow us on instagram! [@hughgromangroup](#)

**The Hugh Groman Group**

Office: 510-647-5165

Phil's Sliders: 510-845-5060

[www.hughgromangroup.com](http://www.hughgromangroup.com)

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[www.hughgromancatering.com](http://www.hughgromancatering.com)

[www.philssliders.com](http://www.philssliders.com)

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**Sent:** Tuesday, July 31, 2018 12:50 PM

**Subject:** plastics

I don't know much about what is being proposed, but generally speaking, I think it is crucial for Berkeley to take the lead in promoting less plastic usage in all areas of life/living,business!

Thanks  
Karen weil  
1209 Bonita avenue,  
berk. 94709

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**Sent:** Tuesday, September 04, 2018 12:08 AM

**To:** [hobermeit@CityofBerkeley.info](mailto:hobermeit@CityofBerkeley.info); Sophie Hahn; Jesse Arreguin

**Cc:** Berkeley City Council; Berkeley City Council

**Subject:** Foodware Subcommittee and Zero Waste Commission - Single Use Disposable Food Containers

Dear Foodware Subcommittee Members, Zero Waste Commission, Mayor Arreguin and Sophie Hahn Councilmember,

There are really two problems with the littering of single use food containers. One is the single use containers and the other is trash including single use containers strewn in the streets, sidewalks, yards, really across Berkeley.

### Durham, North Carolina Green ToGo

It was disappointing in reading the proposed ordinance and materials for decreasing waste and single use containers that the Durham, North Carolina Green ToGo Reusable Takeout Container Service was not mentioned nor seemed to be considered as an option in decreasing single use containers. There are a number of articles about the Green ToGo program which can be easily found through internet search, it was even featured on PBS Newshour August 21, 2018.

**Here are two links:**

<https://www.pbs.org/newshour/show/this-restaurant-takeout-service-swaps-styrofoam-for-sustainable>

<http://clarioncontentmedia.com/2016/11/durham-green-togo-reusable-takeout-container-service/>

### Trash

As I noted in the public comment period to City Council on return from travel in the midwest there was a sharp contrast between leaving Berkeley, the Oakland Airport and arriving in Minneapolis/St. Paul, MN. The Oakland Airport was filthy, the Minneapolis St Paul Airport was immaculate. The night I arrived and stayed in Bloomington, MN, the local news had a special on the best school custodian and the recognition given by the custodian to the students with the cleanest classroom. As I traveled across the mid-west streets, sidewalks, parks, nature preserves even city centers were pleasant and absent of scattered trash. I was struck over and over how nice it was not to see trash scattered everywhere. Trash cans were conveniently located and people used them. Contrast that with Berkeley. It only takes a short walk outside.

Kelly Hammargren

Resident

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Date: Mon, Sep 3, 2018 at 3:43 PM

Subject: Proposed Berkeley City litter reduction ordinance

To: [stuart@telegraphberkeley.org](mailto:stuart@telegraphberkeley.org) <[stuart@telegraphberkeley.org](mailto:stuart@telegraphberkeley.org)>

Cc: ryan <[ryan.piscovich@icloud.com](mailto:ryan.piscovich@icloud.com)>, [ryan@yogurtpark.com](mailto:ryan@yogurtpark.com) <[ryan@yogurtpark.com](mailto:ryan@yogurtpark.com)>

Hi Stuart,

I am the owner of Yogurt Park, Berkeley, (41 yrs. and counting)! I would like to address the new city ordinance proposal to charge a .25 cent surcharge to customers to reduce waste/litter for cup/containers that are used in or taken out of our business. I am not sure if I understand the scope of this ordinance, but would like to give some thoughts for consideration.

We have 3 specific sizes of Yogurt Park logo cups/containers that are priced by-the-cup size (mini-6.oz./small-12oz./large-16oz.). We cannot allow customers to bring in their own reusable cups/containers as our 3 YP size choices reflect the price of each sale. Additionally, we feel customers who would bring back our YP cups to have refilled could cause health/sanitary issues, as our yogurt product contains live yogurt cultures/milk and if not sanitized properly, could cause customers to become ill, which would directly reflect on our business. Essentially, all of our sales are considered take-out, as customers may or may not choose to sit on our limited bench seating for a short time after purchasing our product at the counter. Adding .25 cents to every cup/container sale would have a tremendous negative effect on our customers, as there is a product/cup price that becomes "too pricey" for a cup of yogurt. The student market is very conscientious of pricing, as well they should be (we already offer a lower cash discount). Oct. 1, we must increase our pricing as Berkeley's employee living wage law becomes effective. By adding the .25 cent cup surcharge would make purchasing our product a negative one. We have not been able to raise our prices in years to cover increases in food costs/ taxes/ rents/ wages/ compostable cups....to list a few.

I encourage the City of Berkeley to again put the small business community back on it's radar....I feel they have "taken their eye off the ball" on the South side. As an example, until recently there were 4 yogurt permits/businesses within 1 1/2 blocks of my long established location (the 3 other stores have gone out of business). Competition can be good for consumers, when not overdone. Also, it seems there are more chain stores being issued permits on the South side than were allowed many years ago....which again does not help the small business establishments.

Stuart, thank you for your help. I may not be able to attend the Thurs. meeting, but if you have any questions of me, I can be reached. I would appreciate any information you receive from the meeting if I cannot attend.

Sincerely,  
Marty Piscovich, owner  
Yogurt Park

**Sent:** Thursday, September 06, 2018 6:59 PM

**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>

**Subject:** Please ban plastic silverware and single use take out meal containers

Ms. Heidi Obermeit (Zero Waste Commission) Berkeley Recycling Program Manager

I advocate for Berkeley to step forward with a law to reduce "food served with a side of garbage". Please ban single-use plastic items like plastic silverware, plastic beverage cups, plastic condiment or dip cups, and plastic salad containers, and the cardboard surrounding grilled cheese type sandwich that gets greasy.

67% of Bay Area street litter is disposable foodware. I support reusables and I want to help restaurants feel supported in knowing that this can, and does work!

I support making reuse the norm and reducing throwaway items when eating out.

I much prefer using a steel fork and spoon which is sturdy and reuseable, I would prefer also dip or condiments served in dishes that can be used many times by many customers. And I much prefer drinking from glass glasses which can be washed and reused.

On a global basis, only 14% of plastic is collected for recycling. The reuse rate is terrible compared to other materials -- 58% of paper and up to 90% of iron and steel gets recycled.

Research shows there will be [more plastic than fish by weight in the world's oceans](#) by 2050, which has spurred policy makers, individuals and companies into action.

Last month 40 companies including Coca-Cola ([KO](#)), Nestle ([NSRGF](#)), Unilever ([UL](#)) and Procter & Gamble ([PG](#)) [pledged to slash the amount of plastic](#) they use and throw away in the United Kingdom.

It is time for Berkeley to take a similar pledge to reduce throw away plastic silverware and meal containers.

--

Beth Schmaltz,  
1006 High St.,  
Madison, WI . 53715

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Melissa Hatheway  
Director of Marketing and Community Relations  
Rialto Cinemas @ Elmwood  
Berkeley's Best Neighborhood Movie Theater

2966 College Avenue at Ashby  
Berkeley, CA 94705  
Tel 707 829-3456  
[mhatheway@rialtocinemas.com](mailto:mhatheway@rialtocinemas.com)

Thank you to the City of Berkeley, this commission and all the organizations that have been working on this ordinance. We agree wholeheartedly with its goals but the hardship that this ordinance would present to us is onerous.

We are the only independently-owned movie theatre in Berkeley. We are also a movie theatre without a kitchen nor any room for a kitchen. Our more than 100-year-old building has limited space. We have 275 seats – on a Friday or Saturday night let's say we have three sets of close to sold out shows – and half those folks purchase a drink or popcorn we'd need to have 400+ cups in 3 sizes to keep up as well as the same number of bowls in three sizes. We will never have enough room for a dishwasher nor the storage space necessary. Additionally, this would add to our overhead and therefore our ticket prices. Our patrons are cost conscious and would travel to Emeryville, Piedmont and even farther afield. Complying with this program will put us at a great business disadvantage due to the cost.

Again, we applaud the spirit of this ordinance but it is our opinion that it needs to consider the users and how they do business.

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**Sent:** Thursday, September 06, 2018 6:14 PM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** Berkeley Commission on Disability Letter to Zero Waste Commission with related attachments

Hi Heidi,

I have been sent here tonight by the Berkeley Commission on Disability.

Our Statement follows along with attached letter and documents.

Helen Walsh  
Berkeley Commission on Disability

Creating an environmentally conscious place for all  
cities across the state of California, including San

Francisco and Berkeley, the Commission on Disability recognizes that single use plastic cause hazardous effects to our plants and animals on land and in the ocean.

However, we also recognize that people who are in hospice care, seniors, small children, and those with disabilities depend on straws to drink, eat, take medications, etc. in daily use.

A straw is a tool not a convenience.

Many people with disabilities, have a clear need for straws as tools to drink beverages at home and in restaurants. By leaving this community out of the conversation, commissioners are making decisions that may dramatically impact quality of life without gathering input on impacts, recommendations and alternatives from the very group that is most affected by access to straws (or lack thereof).

The disability communities voice therefor should be considered and included in the conversation.

The Berkeley Commission on Disability is requesting that the Zero Waste Commission take proactive efforts to reach the disability community, host a forum or specific meeting session, and continually gather input

from disability stakeholders before finalizing any ordinances and proposing them to City Council.

We are submitting this letter to the Zero Waste subcommittee that will provide both recommendations and information to support a more inclusive process.

Thank you.

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Sent: Friday, September 07, 2018 2:00 PM  
To: Obermeit, Heidi <hobermeit@cityofberkeley.info>; Martin Bourque <martin@ecologycenter.org>; Arreguin, Jesse L. <JArreguin@cityofberkeley.info>; Hahn, Sophie <SHahn@cityofberkeley.info>  
Subject: Proposed City of Berkeley Single Use Foodware and Litter Reduction Ordinance

Heidi, Martin, Jesse, Sophie,

Sorry to be late to be meeting yesterday at Sports Basement

I am writing for myself, and not the DBA (which has not taken position on issue.)

Personally, I support the 25 cent charge on coffee/beverage cups, but think it should be done as a Phase 1.

I think the City should wait to do a Phase 2. Take-out food container should come later after we have some experience re coffee/beverage cups in Phase 1 and figured logistics for returning food containers.

Specifically, I do quite a bit of take-out for dinners where I call ahead and food is waiting for me to pick up. I always wash out and save plastic containers but have not figured out how to return them.

Martin, thanks for telling me about GO-BOX which look promising. Perhaps we could a voluntary pilot program and see how it works?

Cheers, John

John Caner  
2215 Roosevelt Ave.  
Berkeley CA 94703

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**Sent:** Friday, September 07, 2018 4:32 PM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** Disposable-free dining!

Hello,

I just wanted to write in support of this. My family spent this summer learning how to life without buying single-use plastic, or things wrapped in single-use plastic, and once you've set up some new routines it's really not that hard. Grocery shopping and eating out were the biggest two hurdles. I understand that citizens can be resistant to having ideas imposed upon them, but I really think the situation is already so awful that we need regulation to make significant shifts in consumer and company behaviour. I wholeheartedly support this and would be happy to help in whatever way would be useful.

I also wrote about my family's [plastic-free mission](#) for the Chronicle a few weeks ago, if that's useful.

All the best,

Jemima

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Jemima Kiss // [jemimakiss.com](http://jemimakiss.com)

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September 6, 2018

**Special Meeting of the Foodware Subcommittee to solicit public input on the proposed Single Use Foodware and Litter Reduction Ordinance**

**30 members of the public attended; 14 public comments.**

**Summary of Public Comments:**

1. Jim Trevor – Artichoke Basille’s Pizza

- The proposed Ordinance is well-intentioned
- Our business only serves to-go; they do not have a dine-in option due to City regulations
- A \$0.25 fee shouldn’t be imposed on restaurants that aren’t allowed by the City to accommodate a dine-in option
- We do not want to produce more trash from disposable foodware
- Health Department frowns upon individuals bringing their own containers (BYOC)
- It is important to consider the impact of this proposed Ordinance to local businesses

2. Paul – GoBox SF Bay Area

- GoBox offers reusable cups and containers
- Vendor resources should be made available to businesses
- There should be incentives for use of reusable to-go containers
- There should be incentives for businesses to get a dishwasher
- The City could bundle vendor services/resources for businesses
- To support BYOC, I suggest itemizing the “charge” for BYOC with a “\$0.00” on the receipt so customers see that the financial benefit of bringing their own container instead of paying the \$0.25.

3. Melissa Hatheway - Rialto Cinemas Elmwood

- We are the only independently owned theater in Berkeley
- We are in a 100yr old building; they do not have a kitchen or have room for a kitchen
- We do not have room for a dishwasher or storage space for reusables
- We have 275 seats; we don’t have the capacity to collect, wash or store that many cups or dishes
- Patrons are cost conscious
- NOTE: Melissa submitted written comments

4. Helen Walsh – representing the City of Berkeley Commission on Disability

- Single Use Disposables impact the environment

- People with medical issues, in hospice, seniors, and children may depend on straws to eat or take medication
- Straws are a tool, not a convenience
- NOTE: The Commission on Disability submitted written comments

5. Jamie Smith – Clean Water Action

- Through Clean Water Action’s ReThink Disposable Program, over 100 Bay Area businesses have collectively:
  - saved an average of \$3,000/year
  - prevented 122,000 pounds of waste
  - eliminated the use of over 10 million pieces of trash
- Businesses accomplished this feat by switching to reusable foodware for on-site dining
- Although some businesses voluntarily eliminate/reduce use of disposables, it will take leadership of this City Council to make an effective impact.
- Cost of increased water use from washing reusables is a common concern from businesses; in reality, the increase in cost is insignificant.
- The use of disposables wastes water; the water used to produce, distribute and manage disposables is significantly greater than the water needed to wash a reusable item thousands of times.
- I ask City Council to adopt this Ordinance

6. Sam – Third Culture Bakery

- I am a Business Owner and UCB graduate with an Environmental Science background
- Support intent of proposed Ordinance
- Not sure how this will work in practice at a bakery with sauces, whipped cream, etc.
- Hygiene/safety is a big concern
- Have seen problems with people BYOC when he worked for a coffee shop; people would bring in moldy cups and cups containing spoiled milk
- Need a balanced approach
- Need to have health department and other stakeholders involved
- Most logical progression would be to promote compostables
- Disappointed that compost isn’t emphasized
- Recommend the City rethinks the Ordinance and moves in a more natural progression

7. Business Owner from Top Dog

- Recommends compostable containers be adequate to dodge the to-go fee
- The fee is an administrative hassle
- BYOC is problematic – have to comply with Health Department regulations
- We do not have space for a dishwasher



- Concern about reusables (especially glass or porcelain) being used as projectiles
- We currently bolt everything down (napkin holders, etc.) because this has been a problem; it is dangerous/a safety concern for his staff.

8. UC Berkeley Student

- The work Clean Water Action is doing is very important
- Should inform businesses about compost bins/encourage participation in the compost program
- Is 9 auditors enough? Should encourage Clean Water Action to work with local groups and hire more auditors or interns
- Information is going to be very important in this process

9. Tom – Farm Burger

- We are in Berkeley because we care about Berkeley
- Sales volume in Berkeley is 30% of our East Coast locations
- Our business has been using compostable foodware
- It is important to consider unintended consequences
- Worried businesses will move away from compostable foodware
- Staff live on tips; concerned that the impact of the fee will be a reduction in tips for staff
- The minimum wage law is already a major impact
- I support inclusion of health inspector in this process
- Businesses spend a lot of time figuring out how to comply with health regulations

10. Farhad Salehian – DishJoy

- Our company seeks to profit off of the problems raised tonight (i.e. lack of dishwasher capability)
- The only solution is to share dishwashing services
- We already do it for corporate campuses and we could easily transition to help businesses

11. Ed - Super Duper Burger

- Ask that the City helps business owners with costs
- The City should work with manufacturers of disposables to purchase compliant foodware in bulk so businesses can pass savings on to consumers

12. John Hanscom – Berkeley resident

- It is not enough to say, “go recyclable” or “go compostable”. It is important to figure out how to reduce waste, not focus on how to recycle and compost the waste that is generated.

- There is an excess of plastics when ordering food to-go. You often end up with a handful of utensils, straws, etc. put in the bag.
- We need to be more thoughtful about what is going out the door.

13. Jack Macy – Berkeley Resident

- Appreciate all the comments from businesses
- It is much more environmentally preferable to use reusables over compostables
- If using fiber, half is going to be released as carbon dioxide in the compost process
- PLA often gets screened out at the compost facility or doesn't fully break down
- There is a huge difference in resources used with disposables vs. reusables.
- Businesses are saving money by switching to reusables; it is a win/win
- SF just passed a similar law
- This is a model that will spread to other cities
- Health Department doesn't say that businesses can't refill containers; they just need to follow certain handling practices.
- It can work; I fully support this ordinance.

14. Miriam Gordon – UpStream

- Has researched the health code extensively re: BYOC and created a fact sheet
- CA Department of Health controls local health inspectors
- Health Dept allows refilling of containers, but requires contamination-free practices
- UpStream is working on a guidance document for how to refill customer's BYOCs
- There is a hardship exemption for businesses in the proposed Ordinance; businesses can make the case if they don't have the ability to wash dishes onsite.
- \$0.25 creates a level playing field
- There is cost savings for businesses if not purchasing disposables
- Need a reliable external system for to-go containers to make this easier for businesses and customers

To: To the Secretary and to the members of the Zero Waste Commission  
From: Commission on Disability  
Submitted by: Commission on Disability, Chairperson: Leeder  
Subject: Plastic Straws Recommendations

RECOMMENDATION

Conduct a public hearing and Inviting people with disabilities / Medical conditions from the Public to a stakeholder meeting partnered with the Zero Waste Commission for further recommendations regarding plastic straws. We, the Commission on Disability request that both the Zero Waste Commission and our Commission hold sessions with community members, similar to the meeting that the San Francisco Mayor’s Office on Disability hosted along with SF Environment Department.

SUMMARY: Creating an environmentally conscious place for all cities across the state of California, including San Francisco and Berkeley, the Commission on Disability recognizes that plastic straws and plastic cups with lids cause hazardous effects to our plants and animals on land and in the ocean. However, we also recognize that people who are in hospice care, seniors, small children, and those with disabilities depend on straws to drink, eat, take medications, etc. in daily use. While some might think the answer is simply to ditch plastic straws altogether, small children or people with certain disabilities rely on them to drink and even eat. It is important to engage this community as a whole (and not just individual agencies or nonprofits) when developing ordinances around single-use plastics and plastic straws specifically, because these ordinances may dramatically impact the independence, health, and quality-of-life for people who require straws to drink. We are requesting that the Zero Waste Commission take proactive efforts to reach the disability community, host a forum or specific meeting session, and continually gather input from disability stakeholders before finalizing any ordinances and proposing them to City Council.

FISCAL IMPACTS OF RECOMMENDATION: Minimal.

CURRENT SITUATION AND ITS EFFECTS:

The Berkeley’s Zero Waste Commission is tasked with writing up an ordinance to finding an alternative solution to using plastic straws to recommend to the city council. In general, Berkeley’s Zero Waste Commission held public meetings geared toward

environmental and business stakeholders, but did not specifically engage with stakeholders with disabilities. Many people with disabilities, though, have a clear need for straws as tools to drink beverages at home and in restaurants. By leaving this community out of the conversation, commissioners are making decisions that may dramatically impact quality of life without gathering input on impacts, recommendations and alternatives from the very group that is most affected by access to straws (or lack thereof).

Some of the reasons why straws are so important for people with disabilities include:

- “It’s important to recognize that, for some people, the use of straws is a necessity. Due to deficits in manual dexterity and various other factors, a significant number of folks require straws to drink beverages” (ref. CIL letter to the Zero Waste Commission 06/2018, attached)
- For these people with disabilities, straws are not a “convenience” for drinking beverages, but rather a “tool” to do so.
- Lack of access to beverages is not just frustrating – it can impact independence as well as health. If individuals cannot drink water or other beverages with food, they may have trouble swallowing and then choose to avoid eating out altogether. If they are in the community during the day and get thirsty or dehydrated, a lack of access to beverages (using straws as tools) threatens dehydration and related health impacts. There are many other concerns which could be brought up by the community during forums and communication with the Zero Waste Commission.
- People with disabilities choosing to avoid Berkeley’s businesses because they cannot drink beverages may have a negative impact on those businesses’ economic success, as well.
- Some alternatives to straws that have been suggested to people with disabilities are unreasonable or impossible to do reliably. For example, the suggestion that people use coffee cups (as they have handles) still does not work for many with limited strength or dexterity, and many businesses also do not carry cups with handles. Asking a friend or personal care attendant to hold a cup may result in spills and violates the very principles of independence for many people with disabilities. Other alternatives pose similar problems.
- Certain alternatives to *plastic* straws specifically have their own issues. For example, paper straws may begin to dissolve in hot or carbonated beverages and can even lead to choking for people with existing difficulty swallowing. Businesses providing reusable straws and then cleaning them is also unreliable and potentially unhealthy, especially as the most widely-used type of reusable straws (Silicone) are porous and have concerns about cleanliness.
- Asking people with disabilities to purchase their own straws (whether single-use or “reusable”) and bring them to restaurants presents an undue burden toward simply being able to have beverages outside the home. Somebody may forget a straw and be unable to drink beverages during the day, and cleaning reusable

straws can be unreliable or difficult to do midday (especially for individuals with dexterity difficulties). Purchasing straws is yet another financial burden for a community that is disproportionately low income, many of whom rely on Supplemental Security Income (SSI) payments under \$1000 per month.

- Proposals to charge extra for straws at restaurants themselves similarly place a financial burden on individuals who require them to drink. Even \$.25 per item – similar to the charges suggested in the Disposable Foodware and Litter Reduction Ordinance draft for to-go cups and containers – could add up to easily \$20 or \$30 per month, or more. Individuals on SSI may have well under \$100 in flexible disposable monthly income, so this is significant.

The Commission on Disability recognizes that environmental concerns in general are extremely important. As the Center for Independent Living noted in its letter,

“Just like responsible citizens without disabilities, responsible people with disabilities recognize the importance of maintaining (or, better yet, increasing) our planet’s health. In fact, the disability community arguably has a heightened interest in environmental integrity as toxic environments can exacerbate disability-related medical conditions and can even, in some cases, lead to the acquisition of disabilities.”

However, we remain concerned that people with disabilities have not been provided sufficient opportunity to give input on Disposable Foodware and Litter Reduction Ordinance or similar measures. Nonprofits such as CIL are already inundated with existing work supporting individuals’ independent living needs and cannot be expected to be the go-to advocates in city proceedings, as it goes beyond their scope of work. The Zero Waste Commission and related Subcommittees should take concerted efforts to reach community stakeholders with disabilities at all levels, gather input through forums or other means, and take those considerations into effect when drafting any policy. The members of the Commission on Disability are open to assisting in these efforts.

#### **BACKGROUND:**

California restaurants could only provide plastic straws to customers upon request if Gov. Jerry Brown signs a measure now headed to his desk. Assembly Bill 1884 covers full-service dining, but not takeout establishments like fast-food restaurants. Further information on this bill is available

at: [https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill\\_id=201720180AB1884](https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201720180AB1884)

Either way, as California is currently working on passing the bill above, now each city within the State of California has to come up with its own ordinance with taking a stance on plastic straws and other plastic containers.

As others have noted (see attached Berkeleyside pieces from June 2017 and April 2018, and CIL's letter), there are multiple options – but regardless, it is imperative that any City stakeholders include everybody who may be affected by disposable foodware ordinances. We generally agree with CIL's following statement:

“As the [June 2017] Berkeleyside article makes clear, there are various ways that Berkeley could reduce or eliminate the use of disposable plastic straws while simultaneously accommodating the needs of those for whom straws are not a luxury. ‘Soft bans,’ biodegradable disposable straws, and reusable steel straws are some potential solutions mentioned in the article. Although we are not currently advocating any particular solution, we are urging the City of Berkeley to ensure that those who need straws will continue to have access to them.”

A few suggestions include:

- The city of Berkeley and other cities must make some expectation for those individuals who really rely on straws on a daily basis.
- Perhaps coffee shops and restaurants could make plastic straws available only on request – just like when California had a water drought crisis and people asked for a cup or glass of water upon request.
- The cities could give out reusable plastic straws to those who need them and have these people keep these reusable straws in order to reuse them over and over again. As noted earlier, though, cleaning and reusing straws may be difficult for some of our community members.

## ENVIRONMENTAL SUSTAINABILITY

This community involvement strives to protect the environment while either making an exception for individuals with disabilities and medical chronic conditions upon request or come up with an alternative solution to using plastic straws that works for everyone.

ALTERNATIVE ACTIONS CONSIDERED: Get the business community and members of the disability community from various Bay Area cities to partner and create a subcommittee between the Zero Waste Commission, the Commission on Disability and groups such the Ecology Center to come up with solutions that fits everyone's needs. Berkeley could also sponsor an “innovation competition” to come up with straw alternatives that meet people with disabilities' needs as well as environmental concerns.

CONTACT PERSON

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Disability Services Specialist  
Public Works, Engineering  
City of Berkeley  
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Attachments:

- 1: Statement from Center on Independent Living (CIL) on plastic straws and people with disabilities. (Zero Waste Commission Agenda Packet Regular Meeting June 25, 2018, pages 24-25)
- 2: Berkeleyside NOSH - "What you should know about the Berkeley straw band proposal" (June 6, 2017)
- 3: Berkeleyside NOSH - Berkeley considers charging restaurant customers a fee for disposable foodware (April 26, 2018)



StopWaste is the Alameda County Waste Management Authority, the Alameda County Source Reduction and Recycling Board, and the Energy Council operating as one public agency.

Member Agencies:

- Alameda County
- Alameda
- Albany
- Berkeley
- Dublin
- Emeryville
- Fremont
- Hayward
- Livermore
- Newark
- Oakland
- Piedmont
- Pleasanton
- San Leandro
- Union City
- Castro Valley Sanitary District
- Oro Loma Sanitary District

September 5, 2018

Ms. Heidi Obermeit  
City of Berkeley  
2180 Milvia Street,  
Berkeley, Ca 94704

RE: Comments on City of Berkeley Single Use Foodware and Litter Reduction Ordinance

Dear Heidi,

Thank you for giving us the opportunity to provide comments to the City of Berkeley’s forward thinking Single Use Foodware and Litter Reduction Ordinance. Below are our comments based on our experience in adopting and implementing various ordinances, including the Reusable Bag Ordinance (Ordinance 2016-2, attached here as a reference). We also based our comments on our work in the food reduction and recovery areas.

**Section 1**

1C. Definition of “Takeout Meal”

Includes several different entrée/item configurations and “up to three disposable Food Containers”. If the intent is to charge \$.25 for every 3 disposable containers, these charges could be difficult to interpret and implement by food vendors, complicated to monitor for enforcement, and confusing to customer.

Would Reusable Cups and Reusable Containers have their own separate definitions?

1E. Disposable Foodware Definition– includes all bags, sacks, wrappers.

We recommend removing the word *bags* from the definition of Disposal Foodware to avoid confusion between the [Countywide Reusable Bag Ordinance 2016-2](#) and the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

Including *bags* in the definition of Disposable Foodware creates a conflict with the Alameda County Reusable Bag Ordinance 2016-2. The definition for a compliant reusable bag under [Ordinance 2016-2](#) is different from the standards set forth in Section 3 under the Disposable Foodware Standards. The Foodware Standards in Section 3 in the proposed ordinance allow for compostable bags; however, the majority of non-paper compostable bags will not meet the durability standards set forth in Ordinance 2016-2 and therefore the two ordinances conflict. Removing bags from the definition resolves the conflict.



**Section 2**

2A. Consider phasing in the requirements for utilizing Reusable Foodware and compliant Disposable Foodware. These are two significant changes for a business to comply with at the same time.

2C. Request of Waivers

Waivers may be granted for up to three years – some questions to consider:

What would a partial waiver include?

What happens after 3 years?

What constitutes “make every effort to become compliant”? What type of activities/efforts would the city consider?

What types of thresholds would be considered allowable under “space constraints?”

Who will review/approve waivers? Will there be an online system set up?

Consider requiring Prepared Food Vendors that do request a waiver to, at a minimum, place all disposables in dispensers that are designed to limit consumption such as straws napkins, etc. ReThink Disposable has found that this practice helped reduce waste.

With over 500 restaurants in the City of Berkeley, many who currently are not using reusable ware, the City may have many requests for waivers. You might want to consider creating a specific webpage that clearly outlines the process, allowances and some type of database/electronic system to handle requests.

2E - There is a reference: “to meet the Disposable Food Packaging Standards in Section 3. There is no definition of Disposable Food Packaging in Section 3 or in the definition section of the proposed ordinance. Consider referencing Disposable Foodware instead.

**Section 3. Disposable Foodware Standards**

3A – City to maintain list of approved Disposable Foodware source and types and where physically available.

Consider referring to organizations that maintain regularly updated lists of products that meet ordinance requirements. With the rapidly changing products in the market, creating and updating a list can be a very time consuming activity for staff; and this type of list can become outdated very quickly if only updated annually.

3Bai Will Prepared Food Vendors have the adequate infrastructure (front of the house) for patrons to compost and/or recycle the foodware required by the ordinance?

3Bb Disposable Foodware approved by the City shall meet the following standards:

Confirming requirement 3Bb “Free of all intentionally added Fluorinated Chemicals as certified by the Biodegradable Product Institute (BPI) or other third party certifying agency “ aligns with BPI’s schedule to certify these products. Per the BPI website:

<https://www.bpiworld.org/Fluorinated-Chemicals> a complete list of these certified products will not be available until December 2019.

**Section 4 Disposable Foodware Charges.**

Customers shall be charged for Disposable Foodware used for dining off premises.

4A and 4B. Please note, if the “to go” meal is served in a compliant reusable bag, an additional minimum \$0.10 will need to be charged to comply with Ordinance 2016-2, which could increase total “Takeout Meal” charges to be greater than \$0.25. There is no charge for carryout food given to customers in compliant paper bags.

4B –Lack of alternatives (to disposable foodware) might not change consumer behavior in the way that the ordinance intended, e.g. consumers will still have to pay for containers that may end up in the trash can.

4C – Income from charges shall be retained by the Prepared Food Vendor. However, Section 6C stated that the City Manager will collect and receive all fees imposed by this section. While we understand that Section 6 relates specifically to enforcement, it might benefit from some clarification.

4D – Under Ordinance 2016-2, carry out of leftover food given to customers in a bag (“doggie bag”) are subject to a minimum \$0.10 charge if the bag is a reusable bag (which can be a thick, durable plastic bag compliant with Ordinance 2016-2). There is no charge for carryout food given to customers in compliant paper bags.

4F – If the intent of the language is to require vendors to provide a line item for both cups and foodware on the receipt, please note that requiring separate line items with charges can be problematic for a vendor as many cash registers are not able to create specific line items for these types of additional charges.

The Reusable Bag Ordinance implementation shows that many cash registers do not have the capacity to make individual line item descriptions. The Reusable Bag Ordinance requires a minimum \$.10 per compliant reusable bags distributed at eating establishments and that charge needs to be itemized on the receipts. However, we allow the utilization of a general category such as Misc. with the appropriate charges to make implementation feasible for affected entities.

**A note regarding consumer’s reusable containers.**

Consider potential concerns regarding consumers wanting to bring their own reusable containers for takeout food to avoid charges (and protect the environment).

In our experience, food service operators are wary of health code violations that will result in a citation if they allow anything beyond reusable cups, which can be sanitized with hot water before filling. Many restaurants will not accept reusable containers brought from home for take-out food, which in essence requires a patron to pay for disposable foodware despite bringing their own container. Vendors cite health code violations that stem from Code ambiguity described below:

[The Current California Retail Food Code](#) is clear on the allowance of consumer’s reusable cups (Article 7 114075 if 2018 Code) for beverages and use of consumer’s personal reusable containers for leftovers *from consumer’s plates*. Where the code is not clear is regarding the use of reusable food containers from home for food to go. Specifically in the scenario where a bring your own (BYO) container passes from customer over the counter to back of kitchen to be filled with food and handed back to customer. Has the Berkeley Environmental Health Dept. confirmed that consumers are allowed to bring their own containers from home to be used for take-out food? If the City Health Dept. determines this type of activity is permitted, consider providing food vendors with outreach materials confirming these activities are allowed by law.

**Section 5 Signage Requirements for Takeout Food Vendors**

5A – Require vendors to post signage. Consider providing small postcard sized signage, as many vendors do not have space to post signage. Experience with Reusable Bag Ordinance shows less than a quarter of the affected eating establishments posted outreach materials provided by ACWMA, which should be a consideration if this is the main outreach vehicle for the City to notify customers of the law.

We hope that these comments are helpful. Please do not hesitate to contact us if you have any questions.

Regards,



Meri Soll  
Senior Program Manager

5 Gyres ♦ Algalita Marine Research Foundation ♦ Break Free From Plastic  
Californians Against Waste ♦ Center for Environmental Health ♦ Clean Water Action  
♦ Judith Enck ♦ Global Alliance for Incinerator Alternatives ♦ Institute for Local Self  
Reliance ♦ Plastic Pollution Coalition ♦ Seventh Generation Advisors ♦ Story of Stuff  
♦ Surfrider ♦ UPSTREAM ♦ Zero Waste USA

September 17, 2018

Berkeley Zero Waste Commission  
2180 Milvia Street  
5th Floor Berkeley, CA 94704

Re: Single Use Foodware Reduction Ordinance- STRONG SUPPORT

Dear Zero Waste Commission:

The undersigned organizations applaud the proposed ordinance (Item #34, introduced April 24, 2018) to reduce single use food-ware and litter. This measure will help Berkeley reduce plastic and packaging waste in food service and ensure disposable food-ware is safer for health and the environment. It represents a brave step forward in tackling a tough problem.

**We are at a pivotal moment in time.** The China National / Green Sword is leaving many U.S. cities without options for recycling mixed paper and plastic. Meanwhile, the petrochemical industry is putting in place infrastructure aimed at increasing plastics production by 400% over the next 30 years.<sup>1</sup> Cities all across the U.S. are drowning in single use packaging, primarily plastic, that is hard to recycle and compost. These are products- typically used in a manner of minutes- that have huge environmental impact, regardless of whether they are made from petroleum based plastic, bio-plastic, paper, or agricultural waste. From the devastation caused by extraction of natural resources or industrial agricultural production, to the energy, toxic chemicals, water use, and pollution associated with production, to the greenhouse gas emissions and pollution in the environment when they are disposed, single use products - no matter what materials they are made of- significantly harm the environment and human health.

**It's time to choose the 2Rs- Reduce and Reuse.** It's clear that we can't recycle and compost our way out of this deluge of plastic and packaging waste. Berkeley is wise to seek solutions at the top of the waste management hierarchy (Reduce, Reuse, Recycle) to drive reduction and reuse. If local government is to reach the 75% diversion from landfill goal of AB 341, it will have to do more than recycle and compost. Similarly, to achieve the storm-water permit requirements established by the state and regional water boards, Berkeley and other jurisdictions will need to

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<sup>1</sup> Geyer, R., Jambeck, J., Law, K.L. Production, use, and fate of all plastics ever made, *Science Advances* (2017), Vol. 3, no. 7, e1700782.

do more than capture and cleanup trash. In both cases, a prevention / source reduction approach is needed.

Local jurisdictions should prioritize food and beverage packaging reduction because packaging represents a quarter of the solid waste stream, as does plastic,<sup>2</sup> and because food and beverage packaging is 67% of the trash on Bay Area streets.<sup>3</sup> This ordinance represents a comprehensive approach to tackling the disposable food packaging problem. It folds in the increasingly-popular straws and utensils on request policies being enacted at the local and national levels, with more forceful measures to evolve from a throw-away culture to one where reusable, durable products are used to deliver food and beverages.

**We support reusables for on-site dining**, as it makes a lot of sense. Too many restaurants nowadays are serving customers on-site with disposables, thanks to the fast food model, brought to us by fast food leaders like McDonalds. This throw-away culture doesn't fit in communities seeking to be climate-friendly and zero waste. We must push these industries to find a more sustainable way to provide fast food without a big pile of garbage generated with each meal. We know that McDonald's CAN do this. They are already providing reusables on site in *McCafes* all across Europe. If they can cater to European taste for croissants served on a real plate, they need to be pushed to serve Americans our burgers on real plates too.

**We support charging customers for take-out in disposables, with a delay on charges for food containers, and city support for innovation.** Charging for disposables to encourage the reusable alternative works, as evidenced by government-mandated bag charges in jurisdictions all across the globe. We've seen a 60-90% reduction in single bag use and plastic bag litter in these jurisdictions. It's not difficult for customers to Bring Your Own (BYO) reusable cup. For food containers, BYO isn't a great way to introduce reusables, since customers are unlikely to carry the containers with them and we understand that BYO containers can significantly slow down operations during a busy lunch or dinner rush. Therefore, we believe it is important to create a reusable container system that restaurants can provide to their customers and would support a delayed implementation period for the charge on disposable food containers. Furthermore, we urge the City to consider supporting the development of innovation in developing reusables systems that are convenient and lower cost than the container charge.

**We support banning PFAS substances in disposable food packaging.** There is ample packaging<sup>4</sup> to provide moisture and grease-proof barriers, are among the most health and food environment-threatening, persistent, and indestructible chemicals currently in use. They migrate out of the package, into our food and beverages, leach into ground and surface water,

<sup>2</sup> Id.

<sup>3</sup> <https://www.mercurynews.com/2011/06/19/survey-pinpoints-sources-of-trash-in-san-francisco-bay/>

<sup>4</sup> Blum A, et al, 2015. [The Madrid statement on poly- and perfluoroalkyl substances \(PFASs\). Environ Health Perspect 123:A107–A111](#); Schaidler LA, et al, Fluorinated compounds in U.S. fast food packaging. *Environ Sci Technol Lett.* 2017; 4(3): 105-111; Trier X, Granby K, Christensen Polyfluorinated surfactants (PFS) in paper and board coatings for food packaging. *Environ Sci Pollut Res.* 2011; 18: 1108-1120; Begley TH, Hsu W, Noonan G, Diachenko Migration of fluorochemical paper additives from food-contact paper into foods and food simulants. *Food Addit Contam Part A Chem Anal Control Expo Risk Assess.* 2008; 25(3): 384-390. .

contaminate compost, and can be up-taken by crops. Banning their use in food packaging is essential.

Thank you for the opportunity to provide input on this important measure.

Sincerely,

Miriam Gordon  
Program Director  
UPSTREAM

Judith Enck  
Former EPA Regional Administrator

Leslie Mintz Tamminen  
Oceans Director  
Seventh Generation Advisors

Sue Chiang  
Pollution Prevention Program Director  
Center for Environmental Health

Ruth Abbe  
President  
Zero Waste USA

Shilpy Chhotray  
Senior Communications Officer  
Break Free From Plastic

Angela T. Howe, Esq.  
Legal Director  
Surfrider Foundation

Samantha Sommer  
Waste Prevention Program Manager  
Clean Water Action, California

Eva Holman  
Rise Above Plastics Program Lead  
Surfrider San Francisco Chapter

Anna Cummins  
Founder and CEO  
5 Gyres

Kelly McBee  
Policy Analyst  
Californians Against Waste

Stiv Wilson  
Director of Campaigns  
Story of Stuff

Michael Doshi  
Youth Leadership Programs Manager  
Algalita Marine Research & Education

Brenda Platt  
Co-Director  
Institute for Local Self Reliance

Dianna Cohen  
Executive Director  
Plastic Pollution Coalition  
Incinerator Alternatives

Monica Wilson  
Research and Policy Coordinator  
Global Alliance for



Chrise De Tournay, Chair  
Zero Waste Commission  
City of Berkeley

September 20, 2018

Re: Strong Support for Disposable Foodware and Litter Reduction Ordinance

Dear Chair and Commissioners,

As you know, the Ecology Center is an originator of curbside recycling and the long-term operator of the City of Berkeley's Residential Curbside Recycling Collection Program. We have worked with the Commission, City Staff, and City Council members to address the growing problems associated with disposable food ware in our city and across our waterways, oceans, and planet.

We believe that the approach developed in collaboration with a broad and experienced group of experts in this arena and referred by Council for review to the Zero Waste Commission is the most comprehensive ordinance yet proposed by any city. As proposed we are convinced this ordinance would dramatically reduce single-use disposable foodware and the related impacts on our streets, storm drains, creeks, and shoreline. We also believe it can reduce ocean pollution both here and internationally. We see immediate benefits for improving our shopping districts, cutting costs to the Business Improvement Districts for street clean up and allowing them to focus on events, promotions, and other priorities. We also see immediate benefits to the City in reducing waste collection costs, storm water clean up, and of course to recycling and compost programs by lowering direct expenses and contamination.

Expert opinion and field experience shows that some of the key elements of this program, while individually challenging for some businesses, will be achievable and produce net savings and an increase in revenue for local businesses. We sincerely appreciate the thorough, open, and inclusive work of the Foodware Subcommittee and have benefited from participating in all meetings as well as numerous related calls, meetings, and other communications which have given us greater insights to the business impacts of the proposals.

We have the following recommendations to further improve on the proposed ordinance:

- 1) Make an exception for plastic straws that allows and encourages restaurants to provide them without condition, upon request, such that people who need them for medical or other reasons have full and easy access to them as needed;**
- 2) Include direction to health department staff to develop guidance for a contamination-free process for serving food in customer-owned foodware**
- 3) Include funding for free citywide technical support to businesses through a third party provider;**
- 4) Include funding to pilot a reusable takeout foodware program;**
- 5) Require all takeout foodware be compostable in accordance with the city's program;**
- 6) Phase in the container fee following the implementation of the cup fee to give more time for businesses and customers to adapt.**

Thank you for all your hard work and consideration of this proposal.  
Sincerely,



Martin Bourque  
Executive Director



## M E M O R A N D U M

**Date:** 12 September 2018

**To:** The Zero Waste Commission

**From:** The Parks and Waterfront Commission

**Subject:** Responding to request for feedback on draft of the Single Use Foodware and Litter Reduction Ordinance

The Parks and Waterfront Commission would like to commend the Zero Waste Commission for its work in helping to develop a Single Use Foodware and Litter Reduction Ordinance (Attachment A). We support the Ordinance, which will reduce waste from single use food containers in Berkeley through the development of disposable foodware standards, fees of \$0.25 per cup or container for disposable items and mandatory educational signage at the point of sale. We are pleased that extensive outreach was done to craft the legislation (including surveying 59 local businesses) and that several local case studies have demonstrated the economic benefits and feasibility of the ordinance<sup>1,2</sup>. We are also pleased that the Ordinance makes some accommodations, including fee exemptions for customers using WIC or SNAP and allowing biodegradable (paper) straws “on request”.

The Ordinance will help reduce waste in Berkeley’s parks and along the waterfront, which is badly needed. The 2017 Coastal Cleanup Day in Berkeley, Albany and Emeryville picked up 4,300 lbs of trash and recyclables, including 7,241 food wrappers, 2,217 foam packaging items, 2,505 straws and stirrers, 1,891 plastic bags and 1,577 plastic utensils.<sup>3,3a</sup> This waste detracts from residents’ enjoyment of the coast and harms bay-loving species. The Ocean Conservancy says that single-use packaging is the biggest source of trash found in or near oceans and bays, that over 600 species are threatened from the ingestion of plastics, and that 90 percent of seabirds are eating plastics on a regular basis.<sup>4</sup> There will be a transition period and some push-back to the Ordinance at first, but the need to significantly reduce single-use packaging is real. Berkeley can help lead the way to a healthier future for our planet and local waterfront.

## Footnotes:

- (1) <http://reusablebagsac.org/news/successful-results-bag-ordinance>
- (2) <https://serc.berkeley.edu/paying-the-price-of-disposable-cups-at-caffe-strada/>
- (3) <https://www.cityofberkeley.info/shorelinecleanup/>. See also (3a) [www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf); California Coastal Cleanup Results 1989- 2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash <https://www.coastal.ca.gov/publiced/ccd/history.html#top10>; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets <https://upstreampolicy.org/ban-list-20>
- (4) <https://oceanconservancy.org/our-work/marine-debris/2015-data-release/2015-data-release-pdf.pdf>

At a regular meeting of the Parks and Waterfront Commission on Wednesday, September 12, 2018, the commission took action to send this communication and appendix to the Zero Waste Commission (M/S/C: Fogel/Lee): Ayes: McKay, Brostrom, McGrath, Fogel, Lee, Kamen, Kawczynska, Diehm; Noes: None; Abstain: None; Absent: None).

To Whom it May Concern:

Waste is an out of sight, out of mind problem. The average person doesn't think about how much waste they're throwing away, but there is no "away". All of the non-recyclable and non-compostable take-out containers from food establishments we've ever had is still on Earth. All the single-use plastic that we used for 30 minutes has hurt wildlife, contributed to air and water pollution, and increased greenhouse gases. We cannot afford to not think about it any longer.

Strong action is necessary and this Ordinance is a great step in the right direction. In ten years, it will be common sense that all take-out containers are recyclable or compostable and that "for here" items are reusable, just as it is common sense now to have curbside recycling. Berkeley has been a leader in waste by being the first municipality to ban single-use polystyrene. We should continue to lead by passing this Ordinance. This can be the groundbreaking policy that represents Berkeley's progressive and forward-thinking ideals.

For the reasons above, CALPIRG UC Berkeley Chapter has voted to endorse the Single Use Foodware and Litter Reduction Ordinance. Our waste problem is mounting, and we have the power, and duty, to do something about it.

Sincerely,

A handwritten signature in black ink that reads "Nicole Haynes". The signature is written in a cursive, flowing style.

Nicole Haynes  
Zero Waste Co-Campaign Coordinator  
CALPIRG UC Berkeley Chapter

October 3, 2018

Honorable Mayor and City Council members:

I would like to propose these additional changes to the draft ordinance:

1. If businesses are given exemptions from the requirement to provide reusable foodware for in-house dining, they should have to comply with the section of the ordinance that requires them to charge customers for the single use foodware – beverage and meal containers - for in-house dining. As the ordinance is currently drafted they only have to comply with the compostable/recyclable foodware section and I think the requirement to provide straws and other items upon request only. My suggestion is that these exempted businesses should still have to comply with the other aspects of the ordinance.

2. But if my recommendation in #1 is incorporated into the draft ordinance, the council should also consider the fiscal implications of the proposed change in #1 - the taxable sales implication if they cannot use all of the increased revenue from the collected charges (this increased revenue could be significant for a business that only sells food in single use to-go foodware packaging and does not offer in-house dining or has no way of washing any foodware for in-house dining) for implementing the requirements of the ordinance such as education of customers on composting, increased cost of providing compliant compostable to-go containers, signage etc. Perhaps these exempt businesses could be required to use some of those increased charge-related income to fund a city-wide pilot or a reusable foodware system on their own – their choice – which could be considered a form of EPR – extended producer responsibility or in this case Extended Retailer Responsibility - ERR. Perhaps non-exempt businesses could also be required to do this as well as part of their required uses of the increased income from the collected foodware charges. I've added an item (d) in #3 below for this reason.

3. The following language should be considered for inclusion to ensure that the charges collected by the businesses are not considered taxable by the state board of equalization:

**“All moneys collected pursuant to this article shall be retained by the store and may be used only for the following purposes:**

**(a) Costs associated with complying with the requirements of this article.**

**(b) Actual costs of labor, equipment and materials for washing foodware and providing customers with washable foodware; costs of providing customers with compliant compostable single-use foodware; costs for reducing litter; and other costs associated with reducing the use of single-use foodware and litter.**

**(c) Costs associated with a store’s educational materials or educational campaign for reducing and/or encouraging the reduction of single-use foodware and litter.**

**(d) Costs associated with supplying customers with reusable to-go foodware that can be returned to the business for washing or as part of a city-wide system of reusable to-go foodware.**

Sincerely,  
Peter Schultze-Allen



**Peter Schultze-Allen, CPSWQ, QSP/QSD, Bay-Friendly QP, LEED-AP**  
Senior Scientist



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Berkeley City Council  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704

## ACTION CALENDAR

April 24, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmember Sophie Hahn and Mayor Jesse Arreguin, and  
Councilmembers Linda Maio and Susan Wengraf

Subject: Referral to the Zero Waste Commission:  
Berkeley Single Use Foodware and Litter Reduction Ordinance

### RECOMMENDATION

1. Refer the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance to the Zero Waste Commission to invite input from key stakeholders, including restaurants and other food retailers and zero waste, plastics, oceans and other environmental experts, and hold public meetings to obtain input on the proposed Ordinance.
2. Refer to the Zero Waste Commission to report back to the City Council results of the Commission's community outreach and analysis, and provide recommendations for improvements to the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

### FINANCIAL IMPLICATIONS

The only added cost of the referral, beyond normal staff time to support the Zero Waste Commission's review of the proposed ordinance, is potential staffing of one or more community meetings to obtain stakeholder and other public input.

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management.

### BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plastic bottles, caps, lids, straws, cups, and containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. The practice of providing

food and beverage packaging free of charge fails to incorporate the environmental and social costs of these products into the price of food and beverage service. As a result, customers and food business operators pay little attention to the quantity of single use packaging products consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging.

### ***Environmental Impacts of Single-Use Disposables***

The production, consumption, and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter, half of which comes from fast food and take-out food establishments<sup>2</sup>
- Eighty percent of marine plastic pollution originates from trash in urban runoff<sup>3</sup>
- In the year 2000, half of all plastic packaging in the UK was comprised of SUDs<sup>4</sup>
- Nearly 700 species of marine wildlife are impacted by ingestion and entanglement of plastics, causing starvation, disease, and death<sup>5</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish<sup>6</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year
- Paper cups alone generate 2.2 billion pounds of waste per year nationwide, consuming over 11 million trees, resulting in 4 billion pounds of carbon dioxide emissions, and requiring the consumption of 35 billion gallons of water to manufacture<sup>7</sup>

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<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> 80% from land based sources: U.S. Department of Commerce, NOAA, Office of Public and Constituent Affairs, (1999) "Turning to the Sea: America's Ocean Future," p.5. Re: most of land-based ocean litter comes from trash in urban runoff: *Trash TMDLs for the Los Angeles River Watershed*, (September 19, 2001):17.

<sup>4</sup> Hopewell, et Al. Royal Society Biological [Sciences Philos Trans R Soc Lond B Biol Sci](#). 2009 Jul 27; 364(1526): 2115–2126.

<sup>5</sup> Gall & Thompson, The Impact of Marine Debris on Marine Life, *Marine Poll Bull*, 2015 Mar 15:93(1-2);170-179

<sup>6</sup> Ellen MacArthur Foundation (2016)

<sup>7</sup> Clean Water Action Disposable vs. Reusable Cups Fact Sheet

Most SUDs are used for just a few minutes before becoming waste, while the plastics many are made of last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>8</sup> Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater<sup>9</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>10</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>11</sup>

### ***Berkeley as a Zero Waste Leader***

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation's first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. 75% of the City's discarded material is diverted from landfill, and there has been a 50% reduction in solid waste disposal between 2000 to 2013<sup>12</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as "compostable") contaminates compost, adding costs and reducing the quality of compost<sup>13</sup>. With China's recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City's collection, sorting, and processing of compostables and recyclables. To reach its Zero

<sup>8</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

<sup>9</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646-1654.

<sup>10</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>11</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

<sup>12</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

<sup>13</sup> Clean Water Action, *What's in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

Waste goals, the City must reduce use of unnecessary single-use food and beverage packaging.

### **Strategies to Regulate SUDs**

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>14</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002 equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>15</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>16</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>17</sup>

There appears to be growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>18</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>19</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>20</sup>

### **Economic Advantages for Businesses**

Businesses in the Bay Area spend between \$0.25 and \$0.85 per meal on disposable foodware.<sup>21</sup> Reducing the use of SUDs can provide significant cost savings, even

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<sup>14</sup> “Successful Results from Bag Ordinance”, 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

<sup>15</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>16</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>17</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>18</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>19</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>20</sup> “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

<sup>21</sup> Id.



considering the costs associated with making the transition to reusables. The *Rethink Disposable* program of the Clean Water Fund, in partnership with STOP WASTE in Alameda County, has conducted a number of case studies showcasing businesses that have voluntarily minimized SUDs and incorporated reusables<sup>22</sup>. These businesses saw annual net cost savings (after accounting for costs of reusables, dishwashing, etc.) from \$1,000 - \$22,000 per year.<sup>23</sup>

In addition, recent surveys completed by the City of Berkeley's Office of Economic Development found that neighborhood cleanliness, including trash collection, was a major concern of business owners interviewed. Business Improvement Districts (BIDs) and the Clean Cities Program work to keep Berkeley's business districts clean, but at great expense. The Telegraph Business Improvement District (TBID), for example, reported collecting over 22 tons of street litter in one year.

### ***Reducing SUDs in the City of Berkeley***

Through the leadership of Berkeley's Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, a proposed Berkeley Single Use Foodware and Litter Reduction Ordinance has been drafted. This visionary Ordinance combines proven strategies for reducing SUDs including promotion of reusable foodware, fees when SUDs are used, and creation of a list of approved, truly compostable or recyclable SUDs for use City-wide.

The Ecology Center and Clean Water Action also undertook an extensive research and public outreach process, including surveys of local food businesses, discussions with business owners and environmental experts, and assessment of a charge-based cup reduction pilot project completed by Telegraph Green and Cafe Strada<sup>24</sup>. This level of research, outreach and field testing represents study and consultation of an intensity and duration rarely undertaken in conjunction with new proposals in Berkeley, and has resulted in a proposed ordinance incorporating extensive expert, community and real-world data.

The survey, conducted in 2017-2018 by Clean Water Action, the Ecology Center, and other partners, covers 59 Berkeley food businesses (about 10% of affected food businesses) of various sizes and service styles, and includes respondents from all of

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<sup>22</sup> <https://cleanwater.org/publications/participating-business-testimonials>

<sup>23</sup> Data provided by Clean Water Action's *ReThink Disposable* program, March 2018. See attached fact sheet.

<sup>24</sup> <https://serc.berkeley.edu/paying-the-price-of-disposable-cups-at-caffe-strada/>

the City's commercial districts. Of these businesses, 58% would support a customer charge for cups, and 67% would support a charge for disposable food containers.

These and other findings inform the proposed ordinance, which was written to be both aspirational and achievable. More complex proposals and bans were rejected in favor of a simplified set of recommendations that offer cost savings for restaurants and small businesses, a stream of revenue for the City to implement and enforce the ordinance, and a major step forward in reducing pollution and litter, and in meeting the City's Zero Waste and Climate Action Goals.

### ***Proposed Ordinance Elements***

The purpose of the proposed Ordinance is to reduce litter and waste associated with single use food and beverage packaging in the City of Berkeley. The proposal requires that food consumed on-site be served in reusable, durable dishes, cups, and utensils. Foil, wrappers, and tray liners are still allowed, and provision is made for waivers under specific circumstances.

The ordinance also provides that food businesses charge customers for take-out cups, clamshells and other take-out foodware, similar to the charge for paper bags associated with California's plastic bag ban (SB 270). Charges for disposables will encourage customers to bring their own reusable cups and containers. \$0.25 will be charged for disposable cups, and \$0.25 for food containers. Food establishments will keep the proceeds from these charges, and the City will collect an "at cost" fee for administration of the program. As with charges for bags, customers using SNAP & WIC will be excluded from paying these fees. The ordinance also provides that single use straws, utensils, and stirrers (which will have to be compostable) be provided only "by request".

Finally, the policy will require that all disposable foodware be free of certain highly toxic chemicals known to migrate into food and beverages, and be recyclable or compostable in the City's waste management programs.

The City will be responsible for creating and updating an accessible list of approved foodware so that food retailers can easily identify products that conform to requirements. This will protect public health and the environment from some of the most toxic and persistent chemicals used in food and beverage packaging, and ensure that "compostables" furnished in Berkeley are actually compostable within the City's program. The City will be responsible for administration and enforcement.

## ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

## CONTACT

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Mayor Jesse Arreguin | (510) 981-7100 | mayor@cityofberkeley.info

## ATTACHMENTS

1. Draft Berkeley Single Use Foodware and Litter Reduction Ordinance
2. CaseStudy: Caravaggio Gelateria Italiana
3. Clean Water Action Disposable vs Reusable Cups Fact Sheet

## Single Use Foodware and Litter Reduction Ordinance

ORDINANCE AMENDING THE XXXX CITY CODE BY ADOPTING CHAPTER XXXX SECTIONS XXXX TO REDUCE SINGLE USE DISPOSABLE FOODWARE

### Findings and Purpose

The council finds and declares as follows:

[                                         ]

### Section 1. Definitions

- A. **"Prepared Food"** means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. "Prepared Food" does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed or raw uncooked meat products.
- B. **"Takeout Food"** means Prepared Food requiring no further preparation which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food delivered by a Prepared Food Vendor or by a third party delivery service.
- C. **"Takeout Meal"** means Takeout Food consisting of an entree, or a full size salad, or a breakfast, lunch or dinner item (such as a sandwich, burrito, pizza, soup) served in up to three Disposable Food Containers.
- D. **"Prepared Food Vendor"** means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113920), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- E. **"Disposable Foodware"** means all bags, sacks, wrappers, paper or foil liners, containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids and any other food contact items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- F. **"Disposable Food Container"** is a container designed for single use that holds 16 oz. or more (for containers with lids) or is 62 cubic inches or larger (for boxes and clamshells).
- G. **"Disposable Cup"** is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages and other drinks.

- H. **“Reusable Foodware”** shall mean all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- I. **“Plastic”** means a synthetic material made from fossil fuel based polymers such as polyethylene, polystyrene, polypropylene, and polycarbonate that can be molded or blown into shape while soft and then set into a rigid or slightly elastic form.
- J. **“Fluorinated Chemicals”** means perfluoroalkyl and polyfluoroalkyl substances or fluorinated chemicals, which for the purposes of food packaging are a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

**Section 2. Reusable Foodware for Dining on the Premises (i.e. “Eating-in”)**

This section applies to Prepared Food served for consumption on the premises of a Prepared Food Vendor.

- A. As of [Effective Date], Prepared Food Vendors shall only sell or provide food and beverages for consumption on the premises using Reusable Foodware, except as provided in Section 2(C).
- B. Prepared Food Vendors offering Takeout Food shall ask customers whether they will consume their purchased food or beverage on the premises (i.e. “for here”) or off the premises (i.e. “to go”). If the purchased food or beverage is intended for consumption on the premises, the Prepared Food Vendor shall serve such food or beverage in Reusable Foodware.
- C. Prepared Food Vendors that do not have on-site or off-site dishwashing capacity to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a full or partial waiver from the requirements of Section 2(A) if they can demonstrate inability to comply due to space constraints and financial hardship, such as investments and costs that take more than a year to be paid for through savings. Waivers may be granted for up to three years, during which time the Prepared Food Vendor shall make every effort to become complaint. If a waiver is granted, all Disposable Foodware used for eating on the premises must conform to the Disposable Food Packaging Standards in Section 3.
- D. As of [Date - 1 year after Effective Date?], new zoning permits and business licenses for Prepared Food Vendors shall only be granted to Prepared Food Vendors that have adequate onsite or offsite dishwashing capacity to comply with section 2(A).

- E. Disposable food wrappers, foil sheets, napkins and paper or foil basket and tray liners shall be allowed for dining on the premises so long as they meet the Disposable Food Packaging Standards in Section 3.

**Section 3. Disposable Foodware Standards**

This section provides standards for the types of Disposable Foodware that may be used for Takeout Food, or for Prepared Food eaten on the premises of a Prepared Food Vendor with a valid waiver, as provided for in Section 2(C).

- A. The City shall maintain a list of approved Disposable Foodware sources and types that shall be available at [physical location] and on the City's website. The City shall update annually the list of approved Disposable Foodware types and sources. No other Disposable Foodware may be used by any Prepared Food Vendor.
- B. Disposable Foodware approved by the City shall meet the following standards:
  - a. Beginning [Date], all Disposable Foodware used to serve or package Prepared Foods that are prepared in the City of Berkeley:
    - i. Must be accepted by City of Berkeley composting or recycling municipal collection programs, and
    - ii. If compostable, must be certified compostable by the Biodegradable Product Institute or another independent third party certifying organization or agency recognized by the City.
  - b. Beginning [Date - one year from Effective Date], compostable Disposable Foodware containing paper or other natural fiber material shall be free of all intentionally added Fluorinated Chemicals as certified by the Biodegradable Product Institute or other third party certifying organization or agency recognized by the City.
  - c. The City may adopt regulations that require Disposable Foodware to have minimum post-consumer recycled content, and any other Disposable Foodware specifications that support the goals of this Ordinance.

**Section 4. Disposable Foodware Charges**

Customers shall be charged for Disposable Foodware used for dining off the premises.

- A. Beginning [Effective Date] , Prepared Food Vendors selling Takeout Food shall charge a customer twenty five cents (\$0.25) for every Disposable Cup provided.
- B. Beginning [Effective Date], Prepared Food Vendors selling Takeout Food shall charge a customer twenty five cents (\$0.25) per Disposable Food Container and no more than twenty-five-cents (\$0.25) per Takeout Meal.
- C. Income from charges for Disposable Cups and Disposable Food Containers shall be retained by the Prepared Food Vendor.
- D. The charges set forth in A and B apply to all Takeout Food and Takeout Meals prepared and sold in the City of Berkeley and served in Disposable Food Containers and Disposable Cups, except for Prepared Food Vendors providing Disposable Food

Containers and Disposable Cups for carry-out of leftovers from Prepared Food eaten on the premises (i.e. “doggie bags”).

- E. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code, or an electronic benefit transfer card issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the charges specified in this Section.
- F. Charges for Disposable Cups, Disposable Food Containers and Takeout Meals shall be identified separately on any receipt provided to the customer.
- G. Disposable straws, stirrers, cup spill plugs, napkins, condiment packets, utensils and other similar Disposable Foodware accompanying Disposable Cups, Disposable Food Containers and Takeout Meals shall be provided free of charge, and only upon request by the customer or at self-serve stations.

#### **Section 5. Signage Requirements for Takeout Food Vendors**

- A. The City shall provide text explaining Disposable Foodware Charges and specifications for signage that Takeout Food Vendors must post in plain view of customers at the point of sale.
- B. Takeout Food Vendors shall also include Disposable Foodware Charges on their printed and electronically available menus.
- C. Takeout Food Vendors shall inform customers of Disposable Foodware Charges for orders taken by telephone.
- D. Third-party delivery services shall include on their electronic platforms text pursuant to subsection A explaining Disposable Foodware Charges and include Disposable Foodware Charges on their menus and billing interfaces.

#### **Section 6. Duties, Responsibilities and Authority of the City of Berkeley**

- A. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter.
- B. The Master Fee Schedule shall be amended to include a fee to cover City expenses of inspection and enforcement of this ordinance.
- C. It shall be the duty of the City Manager to collect and receive all fees imposed by this Section, and to keep an accurate record thereof.
- D. Within three years of the effective date of this Ordinance, the City shall evaluate and report to City Council on the effectiveness of this ordinance.

# CASE STUDY: Caravaggio Gelateria Italiana

**ReThink  
Disposable**  
STOP WASTE BEFORE IT STARTS

## BUSINESS PROFILE

**Name:** Caravaggio Gelateria Italiana

**Business Type:** Gelato Shop

**Location:** Berkeley, CA

**On-site dining:** 22 seats

**Take-out:** Yes

**Ware washing:** Dishwasher purchased during implementation

**Employees:** 4

**Caravaggio Gelateria** is an authentic Italian Gelateria located in North Berkeley that makes all of their Gelatos in house and also serves Italian Panini sandwiches, coffee and espresso. About 50% of their orders are dine-in. They employ four staff and do anywhere between 100 and 200 transactions per day.



*Four efficient napkin dispensers replaced the old dispensers.*

up cost to implement the program \$2,411. The high up-front cost of the dishwasher made the payback period for each item longer, yet there is still a significant annual cost savings of \$2,301 after the payback period was met to cover and exceed the set-up costs in the future.

## Packaging Practices prior to Rethink Disposable:

- ➔ All gelato and beverages served in disposable packaging
- ➔ Disposable tasting spoons used for samples
- ➔ Individually wrapped sugar packets used for coffee service

Emiliano, the owner of Caravaggio, is from Italy and strove to replicate many practices in his shop that one can find in his home country — everything except for the disposable products he was using, like the 91,250 disposable spoons used every year for tastings and the 24,333 individually wrapped sugar packets to cater to the “to-go” coffee service culture. The owner believes that the taste of the handmade gelato is much improved by eating it with a real spoon from a real glass bowl.



## Recommendations Implemented:

- ➔ Reusable water cups, gelato bowls and spoons for on-site dining
- ➔ Reusable spoons utilized for gelato tastings
- ➔ Napkin dispensers and bulk sugar for coffee service
- ➔ Purchased and installed a dishwasher to save water and reduce labor costs

Implementing **ReThink Disposable** recommendations helped significantly reduce waste and achieved Emiliano’s goal to elevate the experience of eating handmade gelato and the ambiance in the shop. Emiliano purchased an efficient ware washing machine that provided energy and water savings, reduced labor time, and created a sanitary work environment. The new dishwasher and set-up cost \$2,100, which made the full set-



*Reusable spoons for tastings and on-site dining replaced 75% of disposable spoons that were used.*

**Emiliano Cecchetti, owner:** “Eating our gelato from a paper cup is like drinking champagne from a paper cup! The idea to change to reusables started with a *ReThink Disposable* visit.”



**Results:**

| Recommendation                                                   | Product Replaced or Minimized | % Disposable Reduction | Payback Period (including dishwasher) | Payback Period (excluding dishwasher) | Annual Savings (after payback period) | Annual Waste Reduction |
|------------------------------------------------------------------|-------------------------------|------------------------|---------------------------------------|---------------------------------------|---------------------------------------|------------------------|
| Implement a reusable gelato cup for dine-in customers            | 6 oz Gelato paper cup         | 67%                    | 7.6 months                            | 3 months                              | \$608                                 | 73 lbs.                |
| Implement a reusable spoon for tasting and for dine-in customers | Plastic tasting spoons        | 75%                    | 4.1 months                            | 21 days                               | \$821                                 | 137 lbs.               |
| Implement an efficient napkin dispenser                          | Napkins                       | 50%                    | 2.7 months                            |                                       | \$183                                 | 146 lbs.               |
| Implement a bulk sugar dispenser                                 | Sugar packets                 | 75%                    | 12 days                               |                                       | \$365                                 | 218 lbs.               |
| Replace disposable water cups with a reusable glass              | 7 oz Water cups               | 100%                   | 9.2 months                            | 18 days                               | \$324                                 | 91 lbs.                |
| <b>TOTAL</b>                                                     |                               |                        |                                       |                                       | <b>\$2,301</b>                        | <b>665 lbs.</b>        |

**THE BOTTOM LINE**

- 151,577 disposable items reduced per year
- \$2,301 annual savings after payback period
- 655 pounds of annual waste reduction
- Improved presentation
- Increased customer satisfaction
- No additional labor required



*Disposable spoons and paper cups were replaced by metal spoons and glass bowls for on-site dining.*

ReThink Disposable is a Clean Water Fund program conducted in partnership with local businesses and government agencies. Generous support for the program is provided by a changing list of public and private funders. To learn more about the program, its partners, and funders, visit: [www.rethinkdisposable.org](http://www.rethinkdisposable.org).



Tel. 415.369.9174  
 ReThinkDisposable@cleanwater.org  
[www.rethinkdisposable.org](http://www.rethinkdisposable.org)

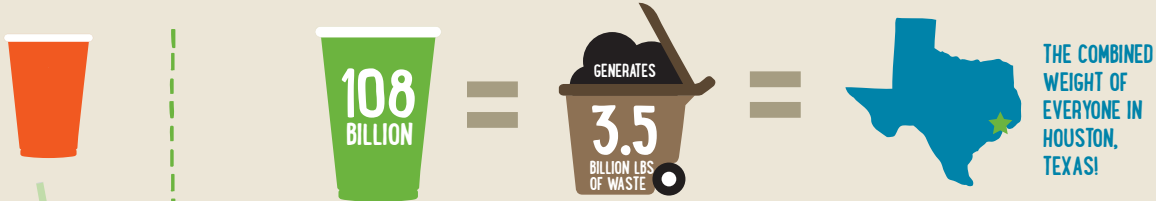


 **CLEAN WATER ACTION**

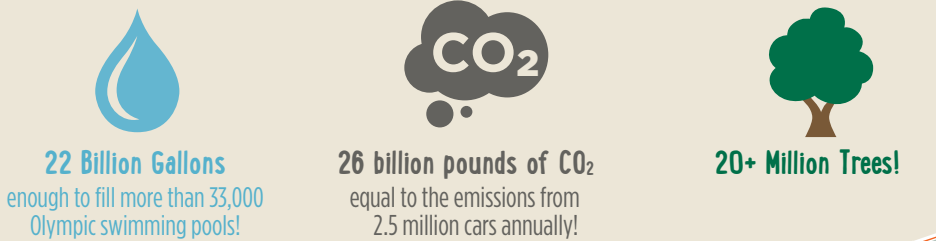
**108,000,000,000**  
disposable cups are used by Americans each year



Placed end to end these could circle the equator almost 300 times!



**Annually the American disposable cup habit uses:**



**MOST CUPS AREN'T RECYCLED:** almost all disposable cups are made of non-recyclable materials like plastic-coated paper or foam food ware



**LET'S COMPARE**

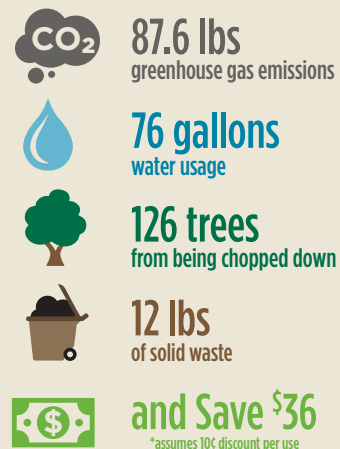
What happens if you replace one disposable cup a day with a reusable mug for one year?



VS.



By replacing one disposable cup every day for one year you prevent:



ReThink Disposable is a project of Clean Water Action and Clean Water Fund in coordination with City of Cupertino Department of Public Works, City of Oakland Department of Public Works, City of Sunnyvale Environmental Services Department, County of San Mateo Department of Public Works, San Francisco Department of the Environment, San Jose Department of Environmental Services, South San Francisco Department of Public Works, and StopWaste. Support for ReThink Disposable has been provided by the Altamont Education Advisory Board, Klean Kanteen, the Lisa and Douglas Goldman Fund, the Santa Clara Valley Water District, STOP WASTE, and the U.S. Environmental Protection Agency.

[http://www.internationalpaper.com/documents/EN/Foodservice/ecotainer\\_FAQ\\_Brochu.pdf](http://www.internationalpaper.com/documents/EN/Foodservice/ecotainer_FAQ_Brochu.pdf)  
<http://www.epa.gov/region9/psa/psa-usecups.html>    <http://www.thebetacup.com/about/>



[www.rethinkdisposable.org](http://www.rethinkdisposable.org)



Office of the City Manager

ACTION CALENDAR

January 22, 2019

*(Continued from December 11, 2018)*

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Phil Harrington, Director, Department of Public Works  
 Subject: Companion Report: Referral Response: Proposed Single Use Foodware and Litter Reduction Ordinance

RECOMMENDATION

Staff appreciates the Zero Waste Commission's diligent and thoughtful work and requests that Council refer their recommendations for the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance to the City Manager to review, to quantify the potential impacts, and to report back to Council with an analysis.

FISCAL IMPACTS OF RECOMMENDATION

If the Zero Waste Commission recommendations are incorporated into the proposed Ordinance, the potential fiscal impacts could include the following:

1. Funding for a City-wide education program and onsite technical assistance for businesses to help them transition to the requirements of the Ordinance;
2. Funding for grants and/or loan administration to help defray business' up-front costs of purchasing reusable foodware and reconfiguring kitchens;
3. Staff time to develop fact-sheets and FAQs for businesses;
4. Staff time to research possible methods to require compostable containers for pre-packaged prepared foods;
5. Staff time to work with recognized industry organizations to identify accepted standards for items that comply with compostability and health concerns in order to develop an approved list of compliant items;
6. Funding for a City-wide program to educate consumers on proper sorting of waste to ensure compostable disposables end up in the compost stream;
7. Funding to improve collection of compostable single-use foodware through increased service and quantity of city bins in high-traffic food take-out establishments;

8. Compliance enforcement costs to require customer-facing in-store compost bins for front-of-house compost collection;
9. Funding for development of a pilot program for standardized reusable to-go container system and/or establishment of a City-wide reusable container program;
10. Staff time to assess impacts of charges on low-income, transient stakeholders;
11. Staff time to review health codes and provide clarity on acceptable practices for Bring Your Own (BYO) containers, including creation of a guidance document and feasibility study;
12. Staff time to work with businesses to support the conditions of BYO containers;
13. Staff time to assess best alternatives to disposable plastic straws that are deemed acceptable for the disabled community, including the possible purchase of reusable silicone straws to be distributed by the City through the disabled community, commissions, and other sanctioned methods;
14. Staff time to coordinate with the Alameda County Waste Management Authority (StopWaste.org) to ensure the Ordinance language is consistent with existing Ordinances such as the Alameda County Reusable Bag Ordinance, including a review of the Reusable Bag Ordinance for consideration of the disposable container charge amount;
15. Staff time to examine best practices of local communities in Alameda County and cities bordering the City of Berkeley.

#### CURRENT SITUATION AND ITS EFFECTS

The Zero Waste Commission submitted recommendations to Council based on input obtained from the public and community stakeholders, including restaurants, food retailers, the disabled community, environmental organizations, StopWaste.org, and City commissions. The disabled community and a number of small businesses raised significant concerns regarding the impacts of the proposed Ordinance. The Zero Waste Commission recommendations address many of these concerns; however, if adopted, implementation of the Zero Waste Commission recommendations will require the coordination of City staff, including the Office of Economic Development, Environmental Health, Code Enforcement, and Public Works.

#### BACKGROUND

The Zero Waste Commission recommendations respond to the City Council referral approved at the April 24, 2018 Council meeting:

1. Refer the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance to the Zero Waste Commission to invite input from key stakeholders,

including restaurants and other food retailers and zero waste, plastics, oceans and other environmental experts, and hold public meetings to obtain input on the proposed Ordinance; and

2. Refer to the Zero Waste Commission to report back to the City Council results of the Commission's community outreach and analysis, and provide recommendations for improvements to the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

The Zero Waste Commission held seven public input sessions, two of which were part of the extended public comment period at monthly Zero Waste Commission meetings, and compiled a report of recommendations based on their analysis of the comments received at these listening sessions and from written comments submitted by the public and stakeholders.

The Zero Waste Commission approved their recommendations for improvements to the Berkeley Single Use Foodware and Litter Reduction Ordinance at their September 24, 2018 regular meeting; (M/S/C) Sharenko/Stein; 7 Ayes: de Tournay, Twu, Poliwka, Sharenko, McKinstry, Stein, Whitney;  
Nays: None; Abstain: None; Absent: Watson, Clark.

#### ENVIRONMENTAL SUSTAINABILITY

If adopted, the proposed Ordinance will reduce the use of disposable foodware in Berkeley. The production, transportation, consumption, and disposal of single-use foodware is a major contributor to litter, storm water pollution, greenhouse gas emissions, recycling program contamination, and waste sent to the landfill. Reduced use of disposable foodware will decrease litter in Berkeley's streets and waterways and advance Berkeley's Zero Waste and Climate Action Plan goals.

#### RATIONALE FOR RECOMMENDATION

Adoption of the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance, including incorporation of the Zero Waste Commission recommendations would have a positive impact on our environment. It would also impact Berkeley businesses, community members, and City staff in various ways. Implementation and enforcement will require the coordination of City departments, including the Office of Economic Development, Environmental Health, Code Enforcement, and Public Works. Implementation would also require funding and create some challenges for businesses. Staff would like to present council with more comprehensive financial and programmatic analysis to support an informed decision.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

Companion Report: Referral Response:  
Proposed Single Use Foodware and Litter Reduction Ordinance

ACTION CALENDAR  
January 22, 2019

CONTACT PERSON

Heidi Obermeit, Recycling Program Manager and Zero Waste Commission Secretary,  
Public Works, 510-981-6357



## Ben Bartlett

Councilmember, City of Berkeley, District 3  
 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
 PHONE 510-981-7130,  
 EMAIL [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

### ACTION CALENDAR

January 22, 2019

*(Continued from December 11, 2018)*

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett, Kriss Worthington & Cheryl Davila  
 Subject: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program

### RECOMMENDATION

That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.

### BACKGROUND

At the City Council special meeting on October 9, 2018, the Planning and Development Department and the City Manager requested direction from the Council on six main issues: quotas, buffers, discretion, equity, retail nurseries, and residential collectives. There were clear recommendations for many of the options presented by staff that work to complete Berkeley's comprehensive cannabis ordinances for Council consideration.

However, at the special meeting, the City Council did not provide specific recommendations regarding the creation of the proposed Equity Program and the number of equity and non-equity applicants that are able to apply.

On March 15, 2018, the Cannabis Commission held a meeting and made recommendations for the implementation of the City's Equity Program for Cannabis retailers. Recommendation No.1 outlines a clear need for an "Equity-based selection process." This will "prioritize businesses that are at least 51% owned by equity candidates" and ensure that those negatively affected by past Cannabis prohibition have a chance to enter the Berkeley Cannabis business and reap the benefits of the growing industry. This selection process will provide access to a group of business owners that would otherwise face significant barriers.

On October 9, 2018, the Planning Department and City Manager recommended slight changes to the Cannabis Commission's considerations while defining equity candidates in the same way as in the Commission proposal:

“Staff recommends an equity program that would prioritize businesses that at are at least 40% owned by equity candidates... These candidates would be selected through a lottery and allowed time to identify and secure locations before applications from non-equity candidates would be considered.”

Firstly, this item seeks to support the Planning Department and the City Manager’s recommendation on the issue of equity. Berkeley is well behind the curve on using a specific equity process in the selection of retailers. Other cities such as Oakland and San Francisco have already implemented policies that prioritize equity candidates in their selection processes, which seek to allow impacted and historically disenfranchised groups to enter the Cannabis industry with little to no barriers. To bridge the gap between our City and others, the Council should move forward with the Cannabis Commission’s proposal for an Equity Program as amended by the Planning Department and City Manager.

Secondly, this item also provides the Council with the opportunity to provide a more clear direction on how to proceed with the number of Cannabis retail establishments. The clear direction being that the Council allows four equity and two non-equity applicants to apply to become storefront Cannabis retailers and that the City processes these applicants within 2 years of their application.

FISCAL IMPACTS OF RECOMMENDATION:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

No significant impact.

CONTACT PERSON:

Councilmember Ben Bartlett  
Malik Diaw

510-981-7130  
mdiaw17@berkeley.edu

ATTACHMENTS:

1. Equity Program Staff Report, Cannabis Commission Meeting 3-15-18
2. Options for Cannabis Regulations and Cannabis Business Selection Process Staff Report, City Council Special Meeting 10-09-18



Attachment 1

Cannabis Commission  
March 15, 2018

1 of 8

TO: Berkeley Cannabis Commission

FROM: Commissioner Brewster

RE: Berkeley Equity Program

**Task:** We have been asked to make a recommendation to the City Council regarding the City's Equity Program including defining language and recommendations for implementation. Specifically, I was tasked with working on the language of our Equity criteria for presentation to the Commission.

**Considerations:** it has become apparent that Berkeley is well behind the curve on addressing Equity as related to Cannabis. Jurisdictions including Oakland, San Francisco, and Portland have comprehensive (although arguably flawed) policies on the books. Municipalities that do not, Seattle for example, are feeling the negative effects. As a progressive City that supports inclusion and progressive values, it is incumbent on us to put forth clear and comprehensive language that demonstrates our support for the promotion of diversity within the Cannabis industry.

It is also apparent after speaking with other local jurisdictions, that Berkeley must devote additional effort (man-power) into getting the City's Equity program off the ground in a timely fashion. Cannabis is a multi-million-dollar industry and the City of Berkeley needs an "Office of Cannabis," and/or a "Cannabis Director," (or some other titled) City Administrator to exclusively oversee these efforts. Such a position may be created and funded from the revenue created from the Recreational Cannabis tax revenue and it is my strong suggestion that the Cannabis Commission immediately recommend the City Council create and fund such a position as soon as possible.

In terms of the Equity Program, I have approached it from the top-down and have endeavored to define our goals on a large scale and then move into the specifics. I have also included "recommendations" and "notes on recommendations," so that the Commission may consider my reasoning.

### Equity Statement

The City recognizes that certain communities have been disproportionately and generationally affected through law enforcement actions including: detentions, arrests, and convictions for cannabis, and cannabis *related* (see "*Related*" below) offenses. These communities also regularly and continually suffer economic disparities. The City intends to recognize and identify programmatic opportunities to address issues of equity by creating the NAME. The NAME will address these past disparities in the cannabis industry by:

- Identifying and minimizing barriers of entry into the emerging Cannabis industry for these affected individuals;
- *Recommendation No. 1 (ADD) and*
- *Dedicate a portion (1%?) of the recreational sales tax revenue towards investment into communities disproportionately impacted by Cannabis prohibition.*

To support this effort, the City will:

1. Develop an Equity based selection process to ensure that individuals who were directly, and generationally affected by previous Cannabis prohibition enforcement efforts, participate and are supported in the City's Cannabis industry. This process will identify applications in which 50% or more of owners can demonstrate that they, or their parent/guardian were directly impacted by the War on

Drugs. Applicants may demonstrate this personal impact when they meet criteria (A) or (B). Criteria (C) will be considered a preferential factor.

- A. Any conviction within the state of California, prior to January 2017, for a cannabis offense
    - **Recommendation No. 2 (ADD) or** a cannabis related offense including both non-violent felonies and misdemeanors; OR
  - B. Three (3) more citations or arrests within the State of California, prior to January 2017, for a cannabis, or cannabis related offense;
    - o To qualify as a related offense pursuant to this section, the applicant must demonstrate to the satisfaction of the City that the citation, arrest, or conviction, was directly attributable to a cannabis offense. The applicant may demonstrate that the offense was Cannabis related by submitting a personal statement which shall be supported by admissible official documentation. Examples of related offenses could include: Health & Safety Code violations: 11350, 11351.5, 11352, 11364, or Penal Code Sections 148(a) or 69.
    - o Driving Under the Influence (DUI) shall not be considered a related offense for purposes of this section.
  - C. The following documentation (or any combination thereof) may satisfy sections (A) & (B): Department of Justice Criminal History Summary, local agency police record, local agency police report, local agency citation, Municipal/Superior Court charging document, or any certified record of a court of competent jurisdiction;
    - **Recommendation No. 3** treat the Low-Income Threshold as a preferential, but not qualifying factor.
  - D. The applicants who demonstrate that they meet the Low-Income Threshold will be given additional preference in the application process when 50% or more of the principal applicants earned <80% AMI in the year immediately preceding the application.
    - o The following documentation (or any combination thereof) will satisfy this section: Tax Returns, CalFresh, Housing Vouchers ....
2. **Recommendation No. 4:** Develop a Community Equity Fund (CEF) which will be funded by a portion of the recreational sales tax revenue (1%?) and by voluntary contributions from General Cannabis Stakeholders during the licensing and renewal process. This fund will be used to support Equity Cannabis Business owners through fee waivers, low-interest loans, training, as well as investment in community programs directly benefiting larger populations impacted by past Cannabis prohibition enforcement actions.

**Notes:**

**Recommendation No. 1:** We must address the inequity created by the War on Drugs on more than one front. Solely implementing an Equity based selection process alone, may provide access in the most basic sense, but it fails to support ongoing efforts to attract and sustain businesses which are substantially owned by a diverse group. In light of the reality that the very definition of the equity applicant positively considers past challenges with criminal and social justice, we must acknowledge that these applicants will lack the resources necessary to successfully participate in an industry replete with well-funded stakeholders. Therefore, the City must do more than simply articulate an Equity policy. We must put our resources where our heart is. We must dedicate no less than 1% of our recreational tax revenue to supporting Equity based businesses. Some examples of where funding could be utilized include: licensing and permitting fees for equity applicants, community Cannabis business training programs, funding of expungement efforts, mentorship programs, etc.

#### 4. How can Berkeley integrate equity considerations into its cannabis regulations?

Current situation: There was no specific equity process in the most recent selection process for retailers in Berkeley. Other cities (Oakland and San Francisco) have adopted equity programs in order to address the effect of disproportionate enforcement of drug laws in historically disenfranchised communities.

##### Considerations:

- Individuals who have been arrested or incarcerated for growing or selling cannabis often lack the financial, real estate and other resources necessary to participate in the now-legal industry.
- An equity program could assist equity candidates (who meet certain criteria) by reducing barriers to entry into the cannabis industry, giving priority in a selection process, or creating a fund to assist communities that have been affected by disproportionate enforcement of drug laws.
- A cannabis business selection process that costs applicants significant time or money will harm those that are not well capitalized.
- There are substantial costs to the City to develop and run an equity program, especially one with on-going responsibilities such as collecting and distributing funds (like the Soda Tax) or monitoring business activities (like an incubator program).

Other cities: Oakland and San Francisco both have equity programs. Both programs give equity candidates priority in cannabis permit selection processes. Both programs also have options which prioritize non-equity businesses that assist (incubate) an equity business through provision of tenant space and/or sharing of business and technical expertise. San Francisco also waives permit fees for equity candidates and has a fund to provide money to equity candidates for business consulting, capital improvements and legal services. Oakland will develop a fund for equity candidates from cannabis tax revenue. Existing cannabis retailers, regardless of equity status, must submit plans to the city to demonstrate how they will further the city's equity goals. See Attachment 6 for the staff recommendation.

Commission recommendations: The Cannabis Commission recommended an equity program that would prioritize businesses that are at least 51% owned by equity candidates. Equity candidates would be defined as individuals who have been impacted either directly or generationally by the War on Drugs in one of two ways: incarcerated for cannabis crimes, or a history of arrests related to cannabis. The Cannabis Commission also suggested setting aside some of the taxes from cannabis businesses to establish a fund to support equity based businesses. See Attachment 6 for the Cannabis Commission recommendation.

The Community Health Commission recommended that if additional retailers are permitted, they be limited to a small number (1 or 2) and be restricted to equity candidates. The Planning Commission is focused on the zoning elements of Berkeley's cannabis regulations and therefore was not asked to comment on an equity program.

Staff recommendation: Staff recommends an equity program that would prioritize businesses that are at least 40% owned by equity candidates. Equity candidates would be defined in the same way as in the Cannabis Commission proposal. Half of the retail and large cultivation businesses permitted by the city moving forward would be reserved for equity candidates. These candidates would be selected through a lottery and allowed time to identify and secure locations before applications from non-equity candidates would be considered.

##### Other options:

- Develop an Equity Fund, funded by all cannabis businesses, to be administered by the City to fund programs and services designed to advance equity in Berkeley. Medical cannabis retailers would be exempt from this requirement since they are already required to donate the equivalent of 2% of all product sold to low-income patients.





Sugar-Sweetened Beverage  
Product Panel of Experts (SSBPPE)

ACTION CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Sugar-Sweetened Beverage Product Panel of Experts Commission

Submitted by: Poki Namkung, Chairperson, SSBPPE Commission

Subject: Allocation of \$4.75 Million Over Two Years, FY20 and FY21, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs).

RECOMMENDATIONS

1. Adopt a Resolution allocating \$4.75 million from the General Fund in FY20 (July 1, 2019 through June 30, 2020) and FY21 (July 1, 2020 through June 30, 2021) that shall be invested in a grant program administered and coordinated by the Berkeley Public Health Division consistent with the SSBPPE's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the effects of SSB consumption. The total of \$4.75 million will be distributed in two installments of \$2.375 million per year for FY20 and FY21. In each of these years, the funds will be distributed as follows:
  - a. Direct the City Manager to award up to 40% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding (Attachment 2).
  - b. Direct the City Manager to award at least 40% of the allocated funds through a RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants (Attachment 3).
2. Direct the City Manager to utilize 20% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report

that disseminates process and outcome data resulting from the SSBPPE funding program. A comprehensive and sustainable media campaign that coordinates with all regional soda tax efforts will be managed by the BPHD with 10% of this portion of the allocation.

#### FISCAL IMPACTS OF RECOMMENDATION

Measure D, passed in November of 2014, created two provisions, namely: a) a 1 cent per ounce tax on sugary drinks distributed in Berkeley and b) creation of a Panel of Experts Commission. The collection of this tax commenced in May of 2015 and is being deposited into the City's General Fund. The SSBPPE Commission's recommendation to Council for allocation of \$4.75 million for FY20 and FY21 is independent of the amount of tax collected from the distribution of SSB in Berkeley. This request will create a liability of \$4.75 million for the City's General Fund in FY20 and FY21.

#### CURRENT SITUATION AND ITS EFFECTS (Ordinance: SUGAR-SWEETENED, 2014)

Our nation, our state, and our community face a major public health crisis. Diabetes, obesity, and tooth decay have been on the rise for decades. Although no group has escaped these epidemics, children, as well as low income communities and communities of color have been and continue to be disproportionately affected. While there is no single cause for the rise in diabetes, obesity, and tooth decay, there is overwhelming evidence of the link between the consumption of sugary drinks and the incidence of diabetes, obesity, and tooth decay.

Sugary drinks such as soft drinks, energy drinks, sweetened teas, and sport drinks offer little or no nutritional value, but massive quantities of added sugar. A single 20-ounce bottle of soda, for instance, typically contains the equivalent of approximately 16 teaspoons of sugar. Before the 1950s, the standard soft-drink bottle was 6.5 ounces. In the 1950s, larger size containers were introduced, including the 12-ounce can, which became widely available in 1960. By the early 1990s, 20-ounce plastic bottles had become the norm. At the same time, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color. In 2006 alone, nearly \$600 million was spent in advertising to children under 18. African American and Latino children are also aggressively targeted with advertisements to promote sugar-laden drinks.

The resulting impact on consumption should not be surprising. The average American now drinks nearly 50 gallons of sugary drinks a year. Childhood obesity has more than doubled in children and tripled in adolescents in the past 30 years; in 2010, more than one-third of children and adolescents were overweight or obese. The problem is especially acute with children in California. From 1989 to 2008, the percentage of children consuming sugary drinks increased from 79% to 91% and the percentage of total calories obtained from sugary drinks increased by 60% in children ages 6 to 11. This level of consumption has had tragic impacts on community health. Type 2 Diabetes –previously only seen among adults –is now increasing among children. If the current

obesity trends are not reversed, it is predicted that one in three children and nearly one-half of Latino and African American children born in the year 2000 will develop type 2 diabetes in their lifetimes.

Our community has not been immune to the challenge of unhealthy weight gain and obesity. According to the 2018 City of Berkeley Health Status Report, over a quarter of Berkeley's 5th and 7th grade students (all race/ethnicities) are overweight or obese. Berkeley has a lower proportion of 5th and 7th grade children who are overweight or obese (29.4%) compared to children in Alameda County (35.3%) but has a higher proportion compared to California (26.8%). However, a higher proportion of African-American children are overweight or obese in Berkeley compared to Alameda County or California.

Tooth decay, while not as life threatening as diabetes or obesity, still has a meaningful impact, especially on children. In fact, tooth decay is the most common childhood disease, experienced by over 70% of California's 3rd graders. Children who frequently or excessively consume beverages high in sugar are at increased risk for dental cavities. Dental problems are a major cause of missed school days and poor school performance as well as pain, infection, and tooth loss in California.

There are also economic costs. In 2006, for instance, overweight and obesity-related costs in California were estimated at almost \$21 billion.

#### BACKGROUND

In November of 2014, the Berkeley voters passed Measure D, which requires both the collection of a 1 cent per ounce tax on the distribution of sugary drinks in the City of Berkeley AND the convening of a Panel of Experts (the Sugar Sweetened Beverage Products Panel of Experts--SSBPPE) to recommend investments to both reduce the consumption of sugary drinks as well as to address the health consequences of the consumption of sugary drinks.

Fiscal revenue reports from the Department of Finance detail that the total Soda Tax revenues collected from May, 2015 through May, 2018 was \$5,096,596. Over the three fiscal years of collection, a conservative estimate of revenues collected for the month of June is \$150,000 per month. Adding the missing revenue from June, 2018 to the previous total for a full three years of fiscal data makes the total funds from Soda Tax revenues \$5,246,596. Approximately \$1,700,000 of this total has thus far, not been allocated for the purposes of reducing sugary drink consumption. Projecting into the future, a conservative estimate of Soda Tax revenues would be \$1,600,000 per year.

On May 17, 2018, the SSBPPE Commission moved to approve the SSBPPE Media Subcommittee's recommendation that 10% of the tax revenues of the distribution of sugar-sweetened beverages that go into the City of Berkeley General Fund be

recommended for allocation toward a sustained annual media campaign to promote water consumption and reduce sugary beverage consumption.

Per the SSBPPE’s charge, the SSBPPE Commission, on July 19, 2018, approved the recommendation to the Berkeley City Council for allocation of \$4.75 million for the period FY20 and FY21, to be made available to invest in grants programs to reduce the consumption of sugary drinks as well as a sustainable annual media campaign to address the health consequences of the consumption of sugary drinks and moved to adopt their recommendation to Council as follows:

**The Commission approves that the Chair will write a Council Report requesting allocation for the Healthy Berkeley Funding Program for FY 2020 and FY2021 consisting of a base allocation of 1.5 million per year for two years for a total of 3 million dollars. The Commission requests an additional amount of collected soda tax revenues heretofore unallocated from 2015 through fiscal year 2018 of approximately 1.75 million dollars.**

**M/S/C:** Ishii/Browne

**Ayes:** Commissioners Browne, Crawford, Moore, Namkung, Rose, Ishii, and Scheider

**Noes:** None

**Abstain:** None

**Recused:** None

**Absent from vote:** Commissioner Kouromenos

**Excused:**

**Motion passed. 9:14 P.M.**

ENVIRONMENTAL SUSTAINABILITY

When sugary drink consumption decreases due to the direct investments in programs and activities, the SSBPPE expects that there will be a reduction to the City’s waste stream.

RATIONALE FOR RECOMMENDATION

The SSBPPE Commission, noting the previous two-year’s allocations of \$1.5 million for FY18 and FY19, believes that it is more effective for grant recipients to continue receiving grant funding in two-year cycles. This longer grant period resulted in more comprehensive strategies to: a) reduce access to SSB, b) improve access to water, c) limit marketing of SSB to children, and d) implement education and awareness campaigns with specific populations. The longer grant period will also indicate the City of Berkeley’s commitment to reducing the consumption of SSB and improving the health of Berkeley residents, particularly those most impacted by obesity, diabetes, tooth



decay, and heart diseases. The Commission further estimates that the previous \$3 million investment over FY18 and FY19 helped increase the capacity of community-based organizations and schools. The longer grant funding will allow grantees to develop multi-level interventions that include education, policy, and institutional, systems and environmental changes with measureable outcome data and evaluation to show the rise in public awareness about the harmful impacts of SSB, reduce consumption of SSB over time, and decrease the health risks among residents of Berkeley.

To have the greatest impact, the SSBPPE Commission recommends that the following populations be prioritized:

- a) Children and their families with a particular emphasis on young children who are in the process of forming lifelong habits.
- b) Children and young adults living in households with limited resources.
- c) Groups exhibiting higher than average population levels of type 2 diabetes, obesity, and tooth decay rates.
- d) Groups that are disproportionately targeted by the beverage industry marketing.

#### ALTERNATIVE ACTIONS CONSIDERED

- a) The Commission deliberated on who should manage and implement the long-term sustained media campaign for which they recommend 10% of funds from the SSB revenues that flow into the General Fund be allocated. The Commission determined that the Public Health Division can be allocated an additional 10% to implement the media campaign since the Let's Drink Water! Campaign was successfully implemented by the Healthy Berkeley Program in 2017.

#### CITY MANAGER

See City Manager companion report.

#### CONTACT PERSON

Dechen Tsering, MPH, Commission Secretary, HHCS, (510) 981-5394

#### ATTACHMENTS

1. Resolution
2. SSBPPE Commission's Criteria for BUSD Funding
3. SSBPPE Commission's Criteria for Community Agencies Funding

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

ALLOCATION: \$4.75 MILLION TOTAL FOR SUGAR-SWEETENED BEVERAGE CONSUMPTION AND REDUCTION GRANT PROGRAM IN FY20 AND FY21

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

WHEREAS, in FY18 and FY19, the City Council awarded a total of \$3 million upon the recommendation of the SSBPPE Commission to demonstrate the City’s long-term commitment to decreasing the consumption of SSB and mitigate the harmful impacts of SSB on the population of Berkeley; and

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

WHEREAS, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color; and

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

WHEREAS, 40% of 9<sup>th</sup> graders in Berkeley High School are either overweight or obese; and

WHEREAS, tooth decay is the most common childhood disease, experienced by over 70% of California’s 3<sup>rd</sup> graders; and

WHEREAS, in 2012, a U.S. national research team estimated levying a penny-per-ounce tax on sweetened beverages would prevent nearly 100,000 cases of heart disease, 8,000 strokes, and 26,000 deaths over the next decade and 240,000 cases of diabetes per year nationwide.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to allocate \$4.75 million from the General Fund to be disbursed in two (2) installments of \$2.375 million in FY20 and \$2.375 million in FY21 and invested as follows:

1. Allocate up to 40% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs for the period, July 1, 2019 to June 30, 2021; and
2. Allocate at least 40% of the allocated funds through a RFP process managed by the Public Health Division for grants to community-based organizations consistent

- with the SSBPPE's goals to reduce the consumption of SSB and to address the effects of SSB consumption for the period, July 1, 2019 to June 30, 2021; and
3. Allocate 20% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data resulting from the SSBPPE funding program. A comprehensive and sustainable media campaign that coordinates with all regional soda tax efforts will be managed by BPHD with 10% of this portion of the allocation.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.



Sugar-Sweetened Beverage  
Product Panel of Experts - (SSBPPE)

## The SSBPPE Commission's Criteria for Berkeley Unified School District (BUSD) Funding

The SSBPPE Commission adopts the following recommendations to City Council for a grant proposal process for BUSD. This recommendation is separate from the SSBPPE Community Grants Request for Proposal (RFP) process. Only BUSD is eligible for this funding. A district proposal must conform to the criteria below and must be adopted by the school board.

### Definition:

BUSD Schools are defined as any BUSD school or program from early childhood education through high school including out-of-school care programs and family engagement.

### The SSBPPE Commission recommends:

1. Up to 40% of the total allocation of the City Council's funding to reduce the consumption of Sugar-Sweetened Beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The SSBPPE will consider and recommend full or partial funding depending on the proposed outcomes. The SSBPPE recommends two year grants for FY20 and FY21.

#### a. Priority Areas and Activities:

- i. Reducing access to SSBs,
- ii. Improving access to water,
- iii. Implementing education and awareness programs to reduce SSB consumption at BUSD.
- iv. Developing multi-level interventions to reduce SSB consumption that include a combination of institutional policy, systems, and environmental change as well as nutrition education and awareness.

#### b. Priority Populations:

- i. Children and their families; pre-school through high school;
- ii. Children and young adults living in households with limited resources;
- iii. Groups exhibiting higher than average population levels of type 2 diabetes, obesity, and tooth decay; and
- iv. Groups that are disproportionately targeted by the beverage industry marketing.

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**c. The highest priority outcomes that should be tracked and measured for beneficiaries of funded programs include:**

- i. Increases in knowledge and awareness of the health risks (oral health, diabetes, and obesity) of consuming sugary drinks. Changes in attitudes reflecting a preference for water or other non-sugary drinks among BUSD students and staff.
- ii. Decreased consumption of sugary drinks among BUSD students and staff.
- iii. Increased family engagement to raise awareness about the health impacts of sugary drink consumption. Changes in family attitudes reflecting a preference for water.

**2. The Grant Process:** City staff will provide opportunities for technical assistance during the grant application process.

**a. Proposal Requirements:**

- i. Proposals must reflect approval from the BUSD School Board.
- ii. BUSD will not sell or serve sugar-sweetened beverages (as defined by the SSB tax) at any BUSD schools or campuses.
- iii. Awarded funding will not supplant BUSD FY20 and FY21 General Fund allocations.
- iv. Funded projects will publicly reflect support from City of Berkeley Program.
- v. Funded projects and programs will include methods for evaluating their process and outcomes based on SMART Objectives.
- vi. The proposal timelines and budgets are feasible.

**b. Criteria for proposal:** The following criteria will be considered, although not exclusively, in determining which proposals are funded:

- i. Proposal aims to decrease consumption of sugary drinks and/or address the health effects of the consumption of sugary drinks. (15%)
- ii. Proposal includes policy, system, or environment (PSE) strategies. (30%)
- iii. Proposal reaches people and communities in the priority populations. (15%)
- iv. Proposal includes partnerships and collaboration. (10%)
- v. Proposal has elements that will last beyond the grant period. (10%)
- vi. Proposal budget matches the work plan and is feasible. (10%)
- vii. Describe related experience. (10%)



## SSBPPE Commission's Criteria for Community Agency Grants

Sugar-Sweetened Beverage  
Product Panel of Experts - (SSBPPE)

**Recommended actions to reduce Sugar-Sweetened Beverage (SSB) consumption and decrease health disparities.**

- 1. Minimum of 40% of the total allocation by the City Council's funding to reduce the consumption of sugar sweetened beverages (SSB's) be invested in grants for community-based programs for FY20 and FY21. A two year commitment will help to stabilize program design and implementation and will result in better outcomes to reduce SSB consumption.**
  - a. The types of interventions that should be prioritized for support include actions to:**
    - i. Reduce access to SSBs;
    - ii. Improve access to water;
    - iii. Limit marketing of SSBs to children;
    - iv. Implement education and awareness campaigns with specific populations, including measurable outcome data; and
    - v. Developing multi-level interventions to reduce SSB consumption that include a combination of institutional policy, systems, and environmental change as well as nutrition education and awareness.
  - b. Priority populations:**
    - I. Children and their families - with an emphasis on young children who are in the process of forming lifelong habits;
    - II. Children and young adults living in households with limited resources;
    - III. Groups exhibiting higher than average population levels of type 2 diabetes, obesity, and tooth decay rates;
    - IV. Groups that are disproportionately targeted by the beverage industry marketing.
  - c. The highest priority outcomes that should be tracked and measured for beneficiaries of funded programs include:**
    - i. Increases in knowledge of the health risks of consuming sugary drinks; changes in attitudes reflecting a preference for water or other non-sugary drinks; and
    - ii. Decreased consumption of sugary drinks.
  - d. Organizations that are prioritized to apply for funding include:**
    - i. Berkeley-based organizations and service providers serving the population of Berkeley.

- ii. Non-profit (501(c)(3) or groups with a fiscal agent.
- iii. Berkeley Unified School District (BUSD) programs will only be able to access BUSD specified funding.

**2. The Grant Process:**

- i. Every effort should be made to simplify the SSB grant process.
- ii. City staff should make available opportunities for technical assistance for first time applicants.

**a. Requirement for receiving a grant:**

- i. Funded organizations must have in place or agree to adopt prior to being funded an organizational policy prohibiting serving SSBs at organization-sponsored events or meetings.
- ii. Awarded funding will not supplant any existing funding.
- iii. Funded projects will publicly reflect support from City of Berkeley Program.
- iv. The project includes methods for evaluating both its process and outcomes based on SMART Objectives.

**b. Criteria for ranking proposals:** The following criteria will be considered, although not exclusively, in determining which proposals are funded:

- I. Proposal aims to decrease consumption of sugary drinks and/or address the health effects of the consumption of sugary drinks. (15%)
- II. Proposal includes policy, system, or environment (PSE) strategies. (30%)
- III. Proposal reaches people and communities in the priority populations. (15%)
- IV. Proposal includes partnerships and collaboration. (10%)
- V. Proposal has elements that will last beyond the grant period. (10%)
- VI. Proposal budget matches the work plan and is feasible. (10%)
- VII. Describe related experience. (10%)







Office of the City Manager

ACTION CALENDAR

January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing, & Community Services

Subject: Companion Report: Allocation of \$4.75 Million Over Two Years, FY20 and FY21, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs).

RECOMMENDATION

Accept the Sugar Sweetened Beverage Product Panel of Experts (SSBPPE) report with the attached clarifications considered.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impacts include allocating up to \$4.75 million dollars from general funds over two years, FY20 and FY21.

CURRENT SITUATION AND ITS EFFECTS

The Public Health Division works in close partnership with the Sugar Sweetened Beverage Product Panel of Experts to reduce consumption and the negative health impacts of sugar sweetened beverages. City of Berkeley staff greatly appreciate the continued dedication and efforts of SSBPPE to address these important issues and guide the City of Berkeley in these efforts.

It is important to clarify two points referenced in the SSBPPE report:

- 1) Most significantly, it is important to note that the tax passed on the distribution of sugar sweetened beverages in November 2014 (Measure D) was a general tax and not a special tax. Therefore, as noted in the text of the SSBPPE report, the recommended allocation “is independent of the amount of tax collected from the distribution of SSB in Berkeley.”

It is true that more revenue from this measure has been deposited into the general fund than has been allocated to support the SSB programs. While it is entirely appropriate for the SSBPPE to ask that the general fund allocation for these programs be increased, it is also important to remember that it is not a dollar for dollar revenue/expense relationship between the SSB revenue and the allocation of funds to support the work of the SSBPPE, as would be the case

were it a special tax. Likewise, it is difficult to know if the actual revenue collected through this tax is unallocated as stated in the report.

- 2) Regarding revenue versus expenses for this program, our accounting differs slightly from that reported by the SSBPPE. The Commission report includes a variance figure of \$1.75 million dollars (revenue-expenditure). It should be noted that the FY15 through FY18 revenue numbers are the actual revenues received by the City and the FY19 number is a projected amount. Based on these numbers, the estimated variance (see below) is about \$1.475 million, with no expenses applied to this program for the first 10 months following the election, even though significant staff time was devoted to the initial implementation effort.

| General Fund for Sugar Sweetened Beverage Programs and Activities                                                                                                                                                                                                          |               |              |              |                 |              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------------|--------------|-----------------|--------------|
| Costs by Fiscal Year                                                                                                                                                                                                                                                       |               |              |              |                 |              |
|                                                                                                                                                                                                                                                                            | FY15 and FY16 | FY17         | FY18         | FY19 (budgeted) | TOTAL        |
| <b>Total General Fund for Sugar-Sweetened Programs and Activities EXPENSES:</b>                                                                                                                                                                                            | \$ 328,205    | \$ 1,631,213 | \$ 1,573,407 | \$ 1,604,625    | \$ 5,137,450 |
| <b>Total SSB Tax REVENUE:</b>                                                                                                                                                                                                                                              | \$ 2,000,258  | \$ 1,578,389 | \$ 1,517,949 | \$ 1,515,000    | \$ 6,611,596 |
| <b>Variance:</b>                                                                                                                                                                                                                                                           | \$ 1,672,053  | \$ (52,824)  | \$ (55,458)  | \$ (89,625)     | \$ 1,474,146 |
| <i>** There was significant staff work in HHCS and PH that is not captured in these figures. Only PH costs from the SSB staff personell are included. SSB staff was not hired until 9 months after work began on these efforts, 5 months after SSBPPE was established.</i> |               |              |              |                 |              |

**BACKGROUND**

The SSBPPE and City of Berkeley staff have worked together successfully through two previous rounds of community agency funding. Additionally, City staff have worked closely with all contracted providers this year to help identify meaningful outcome measures for the funded programs to better demonstrate the success of their efforts. We look forward to releasing the RFP by January 25, 2019, and to working with SSBPPE and the funded agencies to continue making a significant difference in the community.

**ENVIRONMENTAL SUSTAINABILITY**

This recommendation has no direct environmental sustainability impacts. To the extent that these initiatives lead community members to drink tap water rather than canned or bottled beverages, there may be a reduction in solid waste.

**RATIONALE FOR RECOMMENDATION**

Clarify information regarding the program in order to continue the good work of the commission and funded agencies on these important public health issues.

ALTERNATIVE ACTIONS CONSIDERED

Maintain the current level of SSB funding, assess the impact of current programs and determine future funding levels based on a return of investment model.

CONTACT PERSON

Janice Chin, MPH, Public Health Division Manager, HHCS, (510) 981-5121





Office of the City Manager

INFORMATION CALENDAR

January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning and Development

Subject: LPC NOD: 1 and 5 Canyon Road, #LMIN 2018-0005

INTRODUCTION

The attached Notice of Decision for the designation of a City Landmark is submitted to the Mayor and City Council pursuant to Berkeley Municipal Code (BMC) Section 3.24.160, which states that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has granted City Landmark status to the property that includes the addresses 1 and 5 Canyon Road. This action is subject to a 15-day appeal period, which began on January 7, 2019.

BACKGROUND

BMC/LPO Section 3.24.190 allows City Council to review any action of the Landmarks Preservation Commission in granting or denying Landmark, Structure of Merit or Historic District status. In order for Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, a Council member must move this Information Item to Action and then move to set the matter for hearing on its own. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by January 22, 2019. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set. The Council must rule on the application within 30 days of closing the hearing, otherwise the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to appeal the decision, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this action.

CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7401  
Fatema Crane, Secretary to the Landmarks Preservation Commission, 510-981-7413  
Alison Lenci, Assistant Planner, 510-981-7544

Attachments:

1: Notice of Decision – #LMIN2018-0005 for 1 and 5 Canyon Road



L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

---

N O T I C E O F D E C I S I O N

**DATE OF COMMISSION DECISION: December 6, 2018**  
**DATE NOTICE MAILED: January 7, 2019**  
**APPEAL PERIOD EXPIRATION: January 22, 2019**  
**EFFECTIVE DATE OF DECISION (Barring Appeal or Certification): January 23, 2019<sup>1</sup>**

## 1 and 5 Canyon Road

**Landmark application #LMIN2018-0005 for the consideration of City Landmark or Structure of Merit designation status for a property in the Panoramic Hill District, listed on the National Register of Historic Places.**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following designation:

**DESIGNATION:** City Landmark

**APPLICANT:** Virginia Stock, 1320 Monument Street, Pacific Palisades, CA 90272

**ZONING DISTRICT:** E-SR, Environmental Safety-Residential District

**ENVIRONMENTAL REVIEW STATUS:** Such designation qualifies for a Categorical Exemption under Section 15061 of the Public Resources Code, Guidelines for implementation Of the California Environmental Quality Act (CEQA).

**The application materials for this project are available online at:**

<http://www.cityofberkeley.info/zoningapplications>

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<sup>1</sup> Pursuant to BMC Section 1.04.070, if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day. Pursuant to BMC Section 3.24.190, the City Council may “certify” any decision of the LPC for review, within fifteen days from the mailing of the NOD. Such certification shall stay all proceedings in the same manner as the filing of a notice of appeal.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
LMIN2018-0005  
1 and 5 Canyon Road  
January 7, 2019  
Page 2 of 4

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**FINDINGS AND APPROVED APPLICATION ARE ATTACHED TO THIS NOTICE**

**COMMISSION VOTE: 7-0-0-1 (one vacancy)**

**YES:** ABRANCHES DA SILVA, ADAMS, ALLEN, CRANDALL, FINACOM, O'MALLEY, OWENS

**NO:** None

**ABSTAIN:**

**ABSENT:** BEIL

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):**

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley; or by facsimile to (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.
2. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
3. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
  - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - c. The fee for all appeals by Applicants is \$2500.

If no appeal is received, the landmark designation will be final on the first business day following expiration of the appeal period.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you



LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
LMIN2018-0005  
1 and 5 Canyon Road  
January 7, 2019  
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or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.

2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
LMIN2018-0005  
1 and 5 Canyon Road  
January 7, 2019  
Page 4 of 4

**PUBLIC COMMENT:**

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

Questions about the project should be directed to the project planner, Alison Lenci, at (510) 981-7410 or [alenci@cityofberkeley.info](mailto:alenci@cityofberkeley.info). All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 2120 Milvia Street, between 8 a.m. and 4 p.m., Monday through Friday.

**ATTACHMENTS:**

1. Findings
2. Landmark Application, received **OCTOBER 3, 2018**

ATTEST:   
Fatema Crane, Secretary  
Landmarks Preservation Commission

cc: Applicant/Owner  
Residents  
City Clerk

Applicant & Property Owner:  
Virginia Stock  
1320 Monument Street  
Pacific Palisades, CA 90272

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**DRAFT FINDINGS**

**1 Canyon Road – The Torrey House**

**5 Canyon Road**

**Landmark application #LMIN2018-0005 for the consideration of City Landmark or Structure of Merit designation status for a property in the Panoramic Hill District, listed on the National Register of Historic Places.**

**City of Berkeley Landmark Application LMIN2018-0005**

**PROJECT DESCRIPTION**

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Landmark Designation of the property at 1 Canyon Road, the Torrey House & 5 Canyon Road

**CEQA FINDINGS**

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1. The project is found to be exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15061.b.3 of the CEQA Guidelines (activities that can be seen with certainty to have no significant effect on the environment).

**LANDMARK PRESERVATION ORDINANCE FINDINGS**

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2. Pursuant to Berkeley Municipal Code (BMC) Section 3.24.110.A Paragraph 1.b of the Landmarks Preservation Ordinance (LPO), the Landmarks Preservation Commission of the City of Berkeley (Commission) finds that the subject property – including the main residence at 1 Canyon Road, the stairs and retaining walls, and the cottage and garage combination – exhibit architectural merit as an outstanding example of domestic architecture during the Arts & Crafts movement in Berkeley, specifically the First and Second Bay Tradition. The buildings and structures on the property possess integrity of their time and construction and have notable, character-defining features of both the first and second phases of the Bay Area Tradition. Notable features of the building at 1 Canyon Road unique to the First Bay Tradition include its volume, side-gabled, steeply-pitched roof, broad sash windows, and brown wood-shingle materials. Notable features of the stairway and retaining walls unique to the Beaux-Arts style include its balustrades, use of stone material, and grandiose, symmetrical entry way. Notable features of the building unique to the Second Bay Tradition include its small-scale, low-pitched roof, brown wood-shingle material, and horizontal orientation.
3. Pursuant to BMC/LPO Section 3.24.110.A Paragraph 1.c, the Commission finds that this property exhibits architectural merit as part of its neighborhood fabric. The subject property contributes to its neighborhood fabric, the Panoramic Hill District, as a distinct

marker of time and quality design. The Panoramic Hill District is among the most extensive surviving Arts and Crafts neighborhoods in Berkeley, which was the Northern California center of this important and influential architectural movement of the early 20<sup>th</sup> century.

4. Pursuant to BMC/LPO Section 3.24.110.A Paragraph 4, the Commission finds the subject property possesses historic value for its associations with persons renowned in their fields. Such persons are: Ernest Coxhead (1863-1933), renowned architect and one of the pioneers of the First Bay Tradition; Walter Steilberg (1887-1974), designer and engineer, known for his extensive work on Panoramic Hill and patent of reinforced concrete known as Fabricrete; Henry Atkins, (1867-1923) design and partner in the prestigious San Francisco fine arts firm of Vickery, Atkins and Torrey; and Frederic Torrey (1864 – 1935) property owner and resident beginning in 1906 when the building was constructed, and a principal partner in the prominent San Francisco fine arts firm, Vickery, Atkins and Torrey beginning in 1900 and continued his work at the firm during his residence in 1 Canyon Road.
5. Pursuant to BMC/LPO Section 3.24.110.A Paragraph 4, the Commission further finds the subject property possesses historic value for its direct association with a historic *theme*, specifically the many variations of the Arts & Crafts movement which emerged from the San Francisco Bay Area, particularly Berkeley, and found expression on Panoramic Hill.
6. Pursuant to BMC/LPO Section 3.24.110.A Paragraph 5, the Commission finds the subject property is within the Panoramic Hill District, listed on the National Register of Historic Places (Designation #05000424) under criterion C at the local level of significance. The main building and Beaux-Arts stairs and retaining walls at 1 Canyon Road and the cottage and garage at 5 Canyon Road are listed as contributing buildings/features to the Panoramic Hill District.

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**FEATURES TO BE PRESERVED AND RESTORED**

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1. This designation shall apply to the subject property and the following distinguishing features shall be preserved:

**Features of the Site:**

- Zero street setback along Canyon Road;
- Symmetrical, grand Beaux-Arts stairway and entry including balustrades and use of stone material;
- Artificial stone and brick pathways, retaining walls, stairs and railings; and
- Naturalistic plantings including California live oaks that embower the structures.

**Features of 1 Canyon Road:**

- All extant, exterior building features characteristic of the First Bay Tradition
- Large-scale, three story, wood-frame building;
- Side gabled steeply pitched roof with three dormers with broad sash windows on the west facade;
- Two brick chimneys on each side of the gabled roof;
- Second story (main level) large bay windows on west façade, supported by large wooden beam brackets;
- Unpainted brown wood-shingle material;
- Large brick patio area to the south of the building, partly covered by a wood pergola; and  
Brick archway below brick patio area.

**Features of 5 Canyon Road:**

- All extant, exterior building features characteristic of the Second Bay Tradition
- Small-scale, one story cottage atop three-car garage;
- Horizontal orientation with side gabled, low-pitched roof;
- Three sets of wood windows, including a pair of casements flanked by two bay windows projecting on the west façade;
- Side entrance from the main Beaux-Arts stairway;
- Ground floor, Fabricrete garage with three ivy-colored door-less arches; and
- Unpainted brown wood-shingle material.



Planning and Development Department  
Land Use Planning Division

RECEIVED  
OCT 03 2018  
LAND USE PLANNING

City of Berkeley  
Ordinance #4694 N.S.  
**LANDMARK APPLICATION**

1. Street Address 5 CANYON RD.  
City Berkeley  
County Alameda  
Zip 94704

2. Assessor's Parcel Number: 55-1862-10  
Block and Lot:  
Tract:

Dimensions: } MAP OF area (LOT 10) attached.

Cross Streets: PANORAMIC WAY, PROSPECT ST.

3. Is property on the State Historic Resource Inventory? YES, LISTED THROUGH  
Form # NATIONAL REGISTER #05000424

Is property on the Berkeley Urban Conservation Survey? NO  
Form # (STATE SAID TO USE THAT NUMBER)

4. Application for Landmark includes: GARAGE AND COTTAGE  
(a) Building: Garden: Other features:  
b. Landscape or Open Space: Natural Designed Other  
c. Historic Site:  
d. District:  
e. Other:

5. Historic Name: TORREY COTTAGE  
Commonly Known Name: 5 CANYON RD, GARAGE AND COTTAGE

6. Date of Construction: 1935  
(a) Factual: b. Approximate:  
Source of Information: NATIONAL REGISTER OF HISTORIC PLACES  
REGISTRATION FORM

7. Architect: WALTER STEILBERG

8. Builder: ? POSSIBLY STEILBERG

9. Style: SHINGLE COTTAGE ATOP A THREE-CAR FABRICETE GARAGE

10. Original Owners: ~~MISS [REDACTED] (Sister)~~ FREDERICK & ALICE TORREY  
Original Use: PERSONAL SINGLE FAMILY RESIDENCE

11. Present Owners: VIRGINIA STOCK (GREAT GRAND DAUGHTER)

12. Present Use:

|                |                      |        |            |       |
|----------------|----------------------|--------|------------|-------|
| Residential:   | <u>Single Family</u> | Duplex |            |       |
| Multiple:      |                      |        |            |       |
| Commercial:    | Office               | Store  | Industrial | Hotel |
| Institutional: | School               |        | Hospital   | Other |

Current Zoning: ES-R  
Adjacent Property Zoning: ES-R

13. Present Condition of Property:

|           |                  |      |      |      |
|-----------|------------------|------|------|------|
| Exterior: | <u>Excellent</u> | Good | Fair | Poor |
| Interior: | <u>Excellent</u> | Good | Fair | Poor |
| Grounds:  | <u>Excellent</u> | Good | Fair | Poor |

Has the property's exterior been altered? NO. ~~MISS [REDACTED]~~ A WOODEN PLATFORM TO HOLD GARBAGE CANS WAS ADDED

AS DESCRIBED ON NATIONAL REGISTRATION #05000424

14. Description: "A ONE-STORY BROWN SHINGLE COTTAGE ATOP A THREE-CAR FABRICRETE GARAGE WAS BUILT ON THE UP HILL SIDE OF CANYON ROAD WITH NO STREET SETBACK. THE GARAGE IS COMPOSED OF THREE GRACEFUL IVY-COVERED DOORLESS ARCHES. THE SECOND STORY FENESTRATION CONSISTS OF THREE SETS OF WOOD WINDOWS, INCLUDING A PAIR OF CASEMENTS FLANKED BY TWO BAYS. THE STRUCTURE HAS A SIDE-GABLED LOW PITCH ROOF WITH OVERHANGING EAVES AND A SIDE ENTRANCE ACCESSED FROM THE SAME

15. History: BEAUX-ARTS STAIRWAY TO 1 Canyon Rd.

THIS GARAGE AND COTTAGE WAS ADDED TO THE TORREY PROPERTY (1 Canyon Rd) TO PROVIDE PARKING THAT WAS NOT NEEDED WHEN 1 Canyon Rd WAS BUILT IN 1906, AND TO PROVIDE A SEPERATE RESIDENCE FOR ALICE Bailey TORREY. NEXT DOOR NEIGHBOR (1 Panoramic Way) AND FRIEND, CELEBRATED ARCHITECT Walter Steilberg designed the cottage and garage, USING HIS PATENTED FABRICRETE TECHNOLOGY.

16. Significance: THIS PROPERTY (#5 CANYON cottage and garage) IS THE FIRST VISIBLE PROPERTY AS YOU ENTER THE PANORAMIC HILL HISTORIC DISTRICT FROM PROSPECT STREET. IT EXEMPLIFIES THE ARCHITECTURE PRESERVED IN THE DISTRICT: A RESIDENCE BUILT ATOP A GARAGE, ALL NESTLED INTO THE HILLSIDE. IT IS AN EXCELLENT, COMPLETELY UNFACT EXAMPLE OF ARCHITECT WALTER STEINBERG'S NOTED USE OF CONCRETE, SPECIFICALLY HIS PATENTED FABRICRETE.

Historic Value:

National State County City Neighborhood  
proposed

Architectural Value:

National State County City Neighborhood  
proposed

17. Is the property endangered? YES

18. Photographs: Date: JANUARY 2018 Repository:  
Photographer: Google Maps

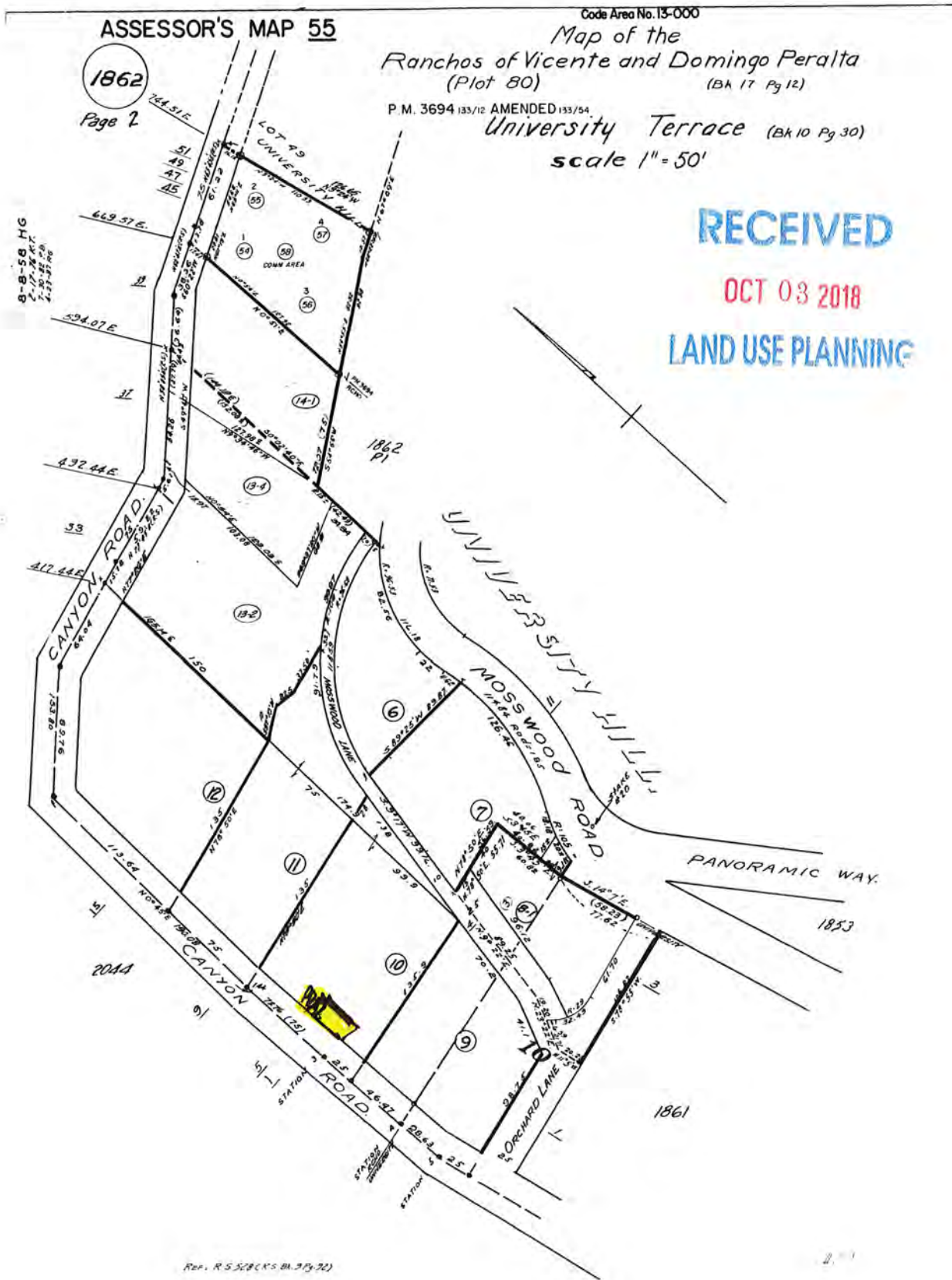
19. Bibliography: SEE ATTACHED BIBLIOGRAPHY WITHIN THE NATIONAL REGISTER OF HISTORIC PLACES REGISTRATION FORM

20. Recorder: Date:  
Organization:



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United States Department of the Interior  
National Park Service

National Register of Historic Places  
Registration Form

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7

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in *How to Complete the National Register of Historic Places Registration Form* (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of Property

historic name Panoramic Hill

other names/site number University Terrace, University Hill

2. Location

street & number Panoramic Wy, Canyon Rd, Mosswood, Orchard Ln, Arden Rd.  not for publication

city or town Berkeley  vicinity

state California code CA county Alameda code 001 zip code 94704

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act of 1986, as amended, I hereby certify that this  nomination  request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property  meets  does not meet the National Register Criteria. I recommend that this property be considered significant  nationally  statewide  locally. (  See continuation sheet for additional comments.)  
[Signature] 28 MARCH 2005  
Signature of certifying official/Title Date  
California Office of Historic Preservation  
State or Federal agency and bureau

In my opinion, the property  meets  does not meet the National Register criteria. (  See continuation sheet for additional comments.)  
\_\_\_\_\_  
Signature of commenting or other official Date  
\_\_\_\_\_  
State or Federal agency and bureau

4. National Park Service Certification

I hereby certify that this property is:

- entered in the National Register  
 See continuation sheet.
- determined eligible for the National Register  
 See continuation sheet.
- determined not eligible for the National Register
- removed from the National Register
- other (explain): \_\_\_\_\_

Signature of the Keeper [Signature] Date of Action 10/21/05

5. Classification

Ownership of Property  
(Check as many boxes as apply)

- private
- public-local
- public-State
- public-Federal

Category of Property  
(Check only one box)

- building(s)
- district
- site
- structure
- object

Number of Resources within Property

(Do not include previously listed resources in the count.)

| Contributing             | Noncontributing |                     |
|--------------------------|-----------------|---------------------|
| 61                       | 18              | buildings           |
|                          |                 | sites               |
| 14 (roads, paths, walls) |                 | 1 (wall) structures |
| 1 (fountain)             |                 | objects             |
| 76                       | 19              | Total               |

Name of related multiple property listing  
(Enter "N/A" if property is not part of a multiple property listing.)

N/A

Number of contributing resources previously listed in the National Register

6. Function or Use

Historic Functions

(Enter categories from instructions)

Domestic – single and multiple dwellings

Current Functions

(Enter categories from instructions)

Domestic – single and multiple dwellings

7. Description

Architectural Classification

(Enter categories from instructions)

Shingle; Bungalow/Craftsman; Mission/Spanish  
Colonial Revival; Beaux-Arts

Materials

(Enter categories from instructions)

foundation Earth, concrete  
roof Shingle; Terra Cotta; Concrete  
walls Shingle; Brick; Granite; Stucco; Concrete; Fabricrete  
other Brick; Iron; Copper; Ceramic Tile; Glass; Concrete; Fabricrete

Narrative Description

(Describe the historic and current condition of the property on one or more continuation sheets.)

See Continuation Sheets

Panoramic Hill  
Name of Property

Alameda, California  
County and State ATTACHMENT 1, part 3

8. Statement of Significance

Applicable National Register Criteria

(Mark "X" in one or more boxes for the criteria qualifying the property for National Register listing)

- A Property is associated with events that have made a significant contribution to the broad patterns of our history.
B Property is associated with the lives of persons significant in our past.
[X] C Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
D Property has yielded, or is likely to yield information important in prehistory or history.

Criteria Considerations

(Mark "X" in all the boxes that apply.)

Property is:

- A owned by a religious institution or used for religious purposes.
B removed from its original location.
C a birthplace or a grave.
D a cemetery.
E a reconstructed building, object, or structure.
F a commemorative property.
G less than 50 years of age or achieved significance within the past 50 years.

Narrative Statement of Significance

(Explain the significance of the property on one or more continuation sheets.)

9. Major Bibliographical References

(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS):

- preliminary determination of individual listing (36 CFR 67) has been requested.
previously listed in the National Register
previously determined eligible by the National Register
designated a National Historic Landmark
recorded by Historic American Buildings Survey #
recorded by Historic American Engineering Record #

Areas of Significance

(Enter categories from instructions)

Architecture

Period of Significance

1901-1950

Significant Dates

Significant Person

(Complete if Criterion B is marked above)

Cultural Affiliation

Architect/Builder

Bernard, Maybeck; Coxhead, Ernest; Morgan, Julia;
Steilberg, Walter; Ratcliff, Walter H., Jr.; Thomas, John
Hudson; Wright, Frank Lloyd; Atkins, Henry; Paine, Robert;
Ratcliff, Robert; Wurster, William.

Primary Location of Additional Data

- State Historic Preservation Office
Other State agency
Federal agency
[X] Local government
[X] University
[X] Other

Name of repository:

See Continuation Sheet

Panoramic Hill  
Name of Property

Alameda, California  
County and State ATTACHMENT 1, part 3

10. Geographical Data

Acreage of Property: 12.3 acres

UTM References

(Place additional UTM references on a continuation sheet)

|   | Zone | Easting | Northing | Zone | Easting | Northing |         |
|---|------|---------|----------|------|---------|----------|---------|
| 1 | 10   | 666060  | 4191480  | 3    | 10      | 666360   | 4191360 |
| 2 | 10   | 660250  | 4191600  | 4    | 10      | 666170   | 4191210 |
|   |      |         |          | 5    | 10      | 666100   | 4191300 |

Verbal Boundary Description

(Describe the boundaries of the property on a continuation sheet.)

Boundary Justification

(Explain why the boundaries were selected on a continuation sheet.)

11. Form Prepared By

name/title Janice Thomas & Fredrica Drotos

organization Berkeley Architectural Heritage Association date November 8, 2004

street & number 37 Mosswood Road telephone (510) 549-1171

city or town Berkeley state CA zip code 94704

Additional Documentation

Submit the following items with the completed form:

Continuation Sheets

Maps

A USGS map (7.5 or 15 minute series) indicating the property's location.

A Sketch map for historic districts and properties having large acreage or numerous resources.

Photographs

Representative black and white photographs of the property.

Additional items

(Check with the SHPO or FPO for any additional items)

Property Owner

(Complete this item at the request of the SHPO or FPO.)

name \_\_\_\_\_

street & number \_\_\_\_\_ telephone \_\_\_\_\_

city or town \_\_\_\_\_ state \_\_\_\_ zip code \_\_\_\_\_

**Paperwork Reduction Act Statement:** This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 et seq.).

**Estimated Burden Statement:** Public reporting burden for this form is estimated to average 18.1 hours per response including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; and the Office of Management and Budget, Paperwork Reductions Project (1024-0018), Washington, DC. 20503.

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 1

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Panoramic Hill Historic District  
Alameda County, California

### NEIGHBORHOOD CHARACTER

The Panoramic Hill Historic District is a woody, hillside residential neighborhood consisting primarily of single-family detached houses built primarily from 1901 through the 1940s in various stages and manifestations of the Bay Area Tradition. Whereas the proposed district is located in Berkeley, California, part of the hillside neighborhood is in Oakland. The Berkeley section is in the lower elevations and where early development occurred.

The hill itself is geographically distinguished by Strawberry Canyon to the north and Hamilton Gulch to the south. In this way, the hill's borders, and also the neighborhood's boundaries, are naturally articulated. Situated in the East Bay Hills, the hillside's predominant orientation is west.

The neighborhood is uphill, within walking distance, and east of what is now known as the University of California at Berkeley's Central Campus. The western face of this hillside neighborhood orients to the panoramic views of the San Francisco Bay, the Golden Gate, Mt. Tamalpais, and to historically significant University structures, e.g. the Campanile. The northern face of the Panoramic Hill neighborhood looks across Strawberry Canyon to another hill where the Lawrence Berkeley National Laboratory and the University's Hill Campus are also located. The Hill Campus includes the Witter Intercollegiate Rugby Field, the Levine-Fricke Intercollegiate Softball Field, and the Strawberry Canyon Recreation Area, which are located at the base of the Panoramic Hill neighborhood, and undeveloped open space known as the Ecological Study Area, which is located to the east of the neighborhood. The northwestern face of the neighborhood orients to the California Memorial Stadium.

To the immediate west of the Panoramic Hill neighborhood is housing zoned for multiple units. With the college campus nearby, many of these dwellings are sororities, fraternities, and co-ops. To the southwest of the neighborhood is historic Hillside Court and Hillside Avenue, which is zoned for single-family use.

At the time of the neighborhood's beginning, the floor of Strawberry Canyon was known as Strawberry Valley, and Strawberry Creek flowed through the canyon above ground. Then, a "beautiful natural place"<sup>i</sup>, the creek has since been culverted and the ravine filled. The University's Botanical Gardens were also in the vicinity<sup>ii</sup>. The properties located at 1, 9, and 15 Canyon Road were sited so as to benefit from these amenities as much as for the panoramic views. Despite the absence of the creek and the botanical gardens in contemporary times, the structures stand as a reminder of the neighborhood's early relationship between natural and built environments.

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In general, contributing houses in the district are as unique as the sites upon which they were built because each house is custom-designed for the peculiarities of the hilly topography. Although some houses are stucco and others a patented concrete known as Fabricrete, most of the houses are clad in still unpainted and unstained wood shingles. Natural building materials, e.g. redwood, are glorified, albeit modestly, in these houses and serve both functional and aesthetic purposes. The relationship between indoors and out-of-doors is evident in expansive window elements granting bay and/or canyon views, numerous west facing and/or north facing balconies, and the prevalence of outdoor rooms, e.g. patios and porches, juxtaposed against living rooms, dining rooms, and sleeping quarters.

The district includes 79 buildings, of which more than 60 contribute. The vast majority were single-family dwellings (and ancillary structures) at the time of their construction although two apartment buildings were built in the neighborhood during the early 1900s. Today the district is zoned single-family although there are numerous exceptions. Many single-family homes have secondary units and in other cases what were originally single-family houses have been divided up into several living units.

The area was developed before the road was macadamized and before the automobile was the preferred and common mode of transportation. There is only one road into the neighborhood, Panoramic Way, and it is narrow and switches back and forth like good hiking trails cut for steep terrain. The road follows the contour of the hill rather than the hill being shaped and cut out to conform to the structure. Off of this one road are three streets, i.e. Canyon Road, Mosswood Road, and Arden Road, which also come to dead ends and which are within the district boundaries. An extension of Panoramic Way dead ends at the first switchback, but this more recently built area is not included in the district. Panoramic Way also continues up the hill beyond the boundaries of the district.

Pedestrian pathways are characteristic of the neighborhood. The most elaborate is a public pedestrian thoroughfare built in a classical Beaux-Arts style known as Orchard Lane. Other public pathways include Mosswood Lane and Arden Steps. Given the meandering route of Panoramic Way, the several arterial pedestrian paths facilitate more efficient foot travel.

Several houses have their main entrances off of these public pedestrian thoroughfares, e.g. 1 and 3 Orchard Lane, and 101 and 107 Panoramic Way. In addition to public pathways, there are also numerous jointly-owned private walkways, e.g. the concrete walkway shared by 5-11 Panoramic Way, 23 Panoramic Way, and 73, 75, and 77 Panoramic Way.

After the road was macadamized and the automobile popularized, numerous garages were built. Several have apartments built above them, e.g. a combination concrete garage and brown shingled apartment at both 1 Panoramic Way and 14 Mosswood Road. In the case of 6 Mosswood Road, both the garage and apartment were built of concrete. In another instance a two-story house was built above a two-car garage, e.g. 101 Panoramic Way. Garages were also sometimes built into retaining walls, e.g. 15 Canyon Road.



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Although some fences have been added over the years, there are several clusters of houses where properties blend with little evidence of where one highly irregular lot begins and the other ends. For example the back yards of 67 Canyon Road and 37 Mosswood Road and the side yard of 29 Mosswood Road and 37 Mosswood Road are spacious, open, unfenced and an appropriate transition to the undeveloped University land to the immediate east.

There are numerous retaining walls, one of which is interrupted or cut out for a staircase and concrete fish pond (at 72 Panoramic Way). The sculpted spout is used to direct water drained from the natural underground springs. To this day water seeps from the adjacent retaining wall. A tall concrete retaining wall, with tapered pillars on top and with a trellis on top of the pillars, curves around the northwest base of the district at 15 Canyon Road. On Arden Road a privately owned retaining wall at the entrance of 100 Arden Road is made entirely of clinker brick. A concrete retaining wall at the second hairpin between 101 and 107 Panoramic Way on the uphill side is broken up by the upper extension of Orchard Lane. The concrete retaining wall on the downhill side of Panoramic Way at the second hairpin creates just enough space for the niche upon which 74 Panoramic Way is built. In these various ways, the hillside development of houses, retaining walls, streets, fountains, and fences is in tune with nature.

### PUBLIC INFRASTRUCTURE

Panoramic Way, a steep and narrow road that switches back and forth at sharp angles through the Panoramic Hill neighborhood, up the hill to the Oakland border and beyond, was carved out in 1888 by Charles A. Bailey as he developed University Terrace. So perilous was the dirt road that, as late as 1917, only one hill resident owned a car; even horses were apt to stumble as they tried to navigate the sharp turns. Though the road was never properly graded, it was eventually paved, and though discussions to create a second access road took place, Panoramic Way has retained its original form and remains the only access road to the Panoramic Hill neighborhood.<sup>iii</sup>

Canyon Road was spelled Cañon Road on a 1910 map of the University Hill subdivision, the spelling being a reflection of the Spanish heritage of the Peralta tract that predated existing development. Before University Hill was developed, the same road was shown on University Terrace subdivision maps in 1888 but without a street name. Before University Terrace was developed, the same road could be seen on Boardman's 1868 map of the Berkeley Property Tract but without a street name. The road itself is flat unlike every other road on Panoramic Hill, joins Panoramic Way at its entrance to the neighborhood, extends around to the canyon side of the hill, passes the adjacent California Memorial Stadium, and ends in a substandard cul-de-sac. A map of Strawberry Valley in 1875 shows the same road extending into the canyon.<sup>iv</sup>

Mosswood Road begins at the second hairpin turn on Panoramic Way, curves around the hillside, runs parallel to Canyon Road, and ends in a substandard cul-de-sac on the north facing side of the hill. The University's Ecological Study Area can be accessed from Mosswood Road as the street borders the undeveloped area, which is coastal live oaks, bay trees, and native ferns in this particular

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ecosystem. From Mosswood Road, a footpath has been worn from human traffic and goes downhill to the Strawberry Canyon Recreation Area and uphill to the Lower Jordan Fire Trail. The road was laid out by Warren Cheney in 1910 for the University Hill subdivision.

Arden Road begins on Panoramic Way and ends in a cul-de-sac just uphill of Mosswood Road. The road was laid out by Warren Cheney for the University Hill subdivision in 1910.

Orchard Lane is a public pedestrian path developed by Warren Cheney in 1910 as part of his University Hill subdivision. Designed by Henry Atkins, the classical Beaux-Arts concrete staircase connects the beginning of Panoramic Way to Panoramic Way at the second hairpin. A more simplified version of Orchard Lane picks up at the second hairpin and connects to Arden Road. The beginning of Orchard Lane is graced with corner piers which were originally topped with urns but have since been lost to vandals. The pathway is lined with poplar trees planted by architect Walter Steilberg when he lived at 1 Orchard Lane. The pedestrian pathway curves up the hill and is defined by balustrades. Each landing benefits from a concrete bench and becomes a place to linger. Whereas the lower section of Orchard Lane is adorned with benches, balustrades, and corner piers, the second section of Orchard Lane is an unadorned concrete stairway with numerous landings. Several houses "front" on both upper and lower sections of Orchard Lane, including (but not limited to) 1 and 3 Orchard Lane and 101 and 107 Panoramic Way. Orchard Lane is not only an arterial pedestrian corridor stairway for movement within the neighborhood but also a visual link to the Bancroft Steps downhill of the neighborhood, also designed by Henry Atkins, and ultimately a practical route to Piedmont Way and the University. Orchard Lane was made a City Landmark in 1991.

Arden Steps is a steep concrete staircase of 100 steps connecting Mosswood Road to the cul-de-sac at Arden Road, which is where Arden Path begins, and extends to Panoramic Way at the upper reaches. This public staircase was part of the University Hill development, and in 1915 a house was built at 38 Mosswood with the main entrance off of Arden Steps. The staircase has a utilitarian design consisting of a retaining wall and galvanized steel railing on its east side, a curb on the west side, and two small landings along its length.

Mosswood Lane was named Stockade Lane when University Hill was first subdivided in 1910. However, in 1922 when Walter Steilberg built a Fabricrete cottage fronting on the footpath, he renamed the public thoroughfare. Whereas Orchard Lane is formal in design, and whereas Arden Steps is a steep climb, Mosswood Lane is an unimproved path with gentle slope and curvature. Boy Scouts reinforced the integrity of the path with railroad ties (circa 2000), and gravel was laid on the lower elevations during a garden tour (circa 2001) but otherwise the path remains unchanged. The path is lined with redwood trees on one side with fallen redwood needle-like leaves softening the footpath itself. The homes that flank each side of the path are the rear yards and back sides of historic and architecturally important dwellings including two by Julia Morgan and two by Ernest Coxhead and one by Frank Lloyd Wright. The curved retaining wall of a Beaux-Arts terrace at 3 Orchard Lane also backs up to Mosswood Lane and was designed by Bernard Maybeck although the retaining wall is now covered by overgrown ivy.

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**PRIVATE DEVELOPMENT**

1. 1 Panoramic Way – TWO CONTRIBUTING: cottage and garage - combination;  
playhouse pergola and garage combination (a)

Year built: 1921; 1931  
Architect: Steilberg, Walter  
Original owner: Steilberg, Walter

This small three-room brown shingle cottage sits above a two car concrete garage at the base of Walter Steilberg's family home. The redwood garage doors with decorative cut-outs are hinged and roll along a metal track inside the garage. A bay window with decorative mullions on the western elevation once opened to panoramic views of the bay. Exterior decorative details include Chinese perforated tiles that also serve as vents. Indoor and outdoor relationships strengthened with a Dutch door at the south elevation which opens onto a wide brick walkway and pergola that runs parallel to Panoramic Way until it meets a brown shingle playhouse with amber glass in windows at the end. The playhouse has a low-pitch gable roof with an 18 lite picture window with centered decorative medallion. Supporting the walkway and pergola is a concrete retaining wall with a built-in garage constructed in 1931.

2. 5, 7, 9, 11 Panoramic Way - ONE CONTRIBUTING: apartment building

Year built: 1912  
Architect: Morgan, Julia  
Original owner: Price, Clifton

"This two-story and basement apartment building is designed around an interior court on a hillside where the views, and hence the fenestration, are of major importance. Upstairs, a large bay over the arched entrance is flanked by groups of 4 windows together, then another bay at each end. On the first floor the large banks of windows at the corners have balustrades that repeat the design of the front of the central arch, and suggest balconies without breaking up the masses. Brick steps lead up to a small terrace from an entrance at one side. There is a suggestion of half-timbering, not used in a medieval sense as much as for design element to emphasize the windows. The central lower façade is indented, with the plain supports creating pattern interest."<sup>v</sup> The half-timbering has been painted off-white, the color of the stucco, and is not original. Part of the front lawn, the hedge, and retaining wall were removed in 1995 to make way for a parking pad for residents and guests' vehicles. A trellis covers. The change does not negatively impact the integrity of the structure.

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3. 18, 20, 22, 24 Panoramic Way – TWO CONTRIBUTING: house; [20, 22, 24 PWay]  
house (a) [18 PWay]

Year built: between 1911 and 1921<sup>vi</sup>

Architect: unknown<sup>vii</sup>

Original owner: unknown

This fourplex is made from two separate buildings which have been physically joined. Both buildings have very shallow street setbacks and appear as one story on the street side but are multi-story from the rear. One of the buildings (18) is stucco whereas the other (20, 22, 24) is clad in brown shingles. The stucco building has an arched entry way that is flanked by small six- lite casement windows. A projecting bay window to the north sits atop a below street-level garage. The garage has side-hinged doors. The wood shingle building is L-shaped with a complicated front gable roof with exposed rafter tails. Three gently pitched parallel gables recede from back to front. The house has a side main entrance. A cantilevered porch wraps from the south side to the western exposure with scroll sawn Swiss chalet inspired balcony railing. A pair of off-center double-hung sash windows and an ornamental leaded glass casement window with Craftsman inspired window frames adorn the simple front façade.

4. 23 Panoramic Way – ONE CONTRIBUTING: house  
NON-CONTRIBUTING: detached garage rehabilitated 1987 (a)

Year built: 1901

Architect: Maybeck, Bernard

Original owner: Boke, George H.

This two story wood frame home on a concrete foundation with a shallow gabled roof, wide overhanging eaves with exposed rafter tails is sheathed on the first floor with horizontal redwood boards and on the second with vertical boards overlaid by horizontal boards, creating a kind of half-timbering effect. The roofline of the front façade is interrupted by a large dormer with a sweeping gable containing four wood casement windows with single lites. The exterior was originally oiled but has since been stained a brownish color to preserve the wood from sun damage while blending in with the environment. The house was originally designed without a roof over the front porch, but early photos show the roof was added long ago. One enters the house via a half-level below the main floor. The living room windows, originally three pairs of casements with a single horizontal division, were replaced by fixed sheets of glass by the second owner, and then returned to the original fixed pane windows by the third and current owners<sup>viii</sup>. These three large windows occupy the west elevation first floor, while four smaller casement windows occupy the dormer directly. The view is oriented toward the San Francisco Bay. The shallow gable roof, wide overhanging eaves, carved balustrades, and cross-log corners all add to the chalet feeling. Board balusters hand sawn in a Swiss motif ornament a sleeping porch on the eastern exposed second story. Posts have been added underneath to support the sleeping porch. The original wood shingle roof has been replaced with a

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composition shingle roof of similar character. One of the most innovative features is the continuous L-shaped space that connects the living and dining room, presaging more modernist dwellings.

A three car garage located uphill behind the home is accessed by Panoramic Way as it winds to its second switchback (across from and below 74 Panoramic Way). The garage is true to the original style of the Boke House with its shallow gabled roof and its stained cedar shakes. It is one story on the street level and two stories from the backyard level of the Boke House with storage on the first or backyard level. Five single lite casement windows open the garage to bay views.

5. 25 Panoramic Way – TWO CONTRIBUTING: house;  
detached garage (a)

Year house built: 1908  
Designer/builder: Broad, A.H.  
Year garage built: 1926  
Original owner: Deane, Margaret

This two story single-family dwelling with side gabled roof has an exterior clad in unpainted and unstained redwood shingles. A side entrance porch with projecting gable mimics the Boke House next door. A projecting bay on the southwest façade contains four sash windows, and two flat projecting bays on the second story each contain a pair of sash windows. Because the house is built near the first hairpin turn on Panoramic Way, the house fronts on Panoramic Way while the garage at the rear of the house also has access from Panoramic Way. The two car garage is brown shingles and has a shallow gabled roof. The structure is enhanced by two square windows each containing four square lites on the western wall opening the garage to SF Bay and Golden Gate views.

6. 27 Panoramic Way – ONE CONTRIBUTING: house

Year built: 1903  
Designer/builder: Hoover, Edgor  
Original owner: Lewis, Exum Percival

This two and one half story simple rectangular brown shingle single-family dwelling with side gable moderately pitched roof and overhanging eaves was built on what remains of a brick cistern used to hold water for the University in its early days.<sup>ix</sup> The front entry is from a shed roofed porch which projects from the northwestern façade. Situated between an uphill and downhill section of Panoramic Way, the house is two stories from below, facing the bay. From above and behind, the house is one story and appears to be a very small cottage shallowly set back from Panoramic Way after the first hairpin turn. Fenestration on the eastern façade consists of a pair of small, vertically elongated wood-frame sash windows. A pair of multi-lite French doors dominates the southern exposure. The front western exposure is no longer visible to the passerby, due to the lush vegetation grown up and around the structure.

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7. 30 Panoramic Way – NON-CONTRIBUTING: house – extensive alterations

8. 32 Panoramic Way - NON-CONTRIBUTING: house – extensive alterations

9. 36 Panoramic Way – ONE CONTRIBUTING: house

Year built: 1908

Designer/builder: May, Frank M.

Original owner: Buckham, J. W.

This two-story hillside house mimics the imagery of a chalet with features such as scroll sawn balcony, vertical wood siding, and carved ornamentation, all of which are similar to the well-known Boke House at 23 Panoramic Way. The shallow side-gable roof is complicated on both north and south sides by three shed dormers 'perforating' the roofline at the eave and supported by wooden side-brackets flanking each sash window. Built on the downhill side of Panoramic Way, a terrace and balcony face into the hillside. The approach is from the northeast where the kitchen entrance is most obvious and under a small shed roof. Exposed beams support the gently sloping shed roof. The main entrance to the southeast is accessed by way of a gable roofed entry porch. The combination half-timber and board-and-batten exterior is now painted cream with green trim.

10. 38 Panoramic Way – ONE CONTRIBUTING: house and garage combination

Year built: 1917

Architect: Steilberg, Walter

Original owner: Steilberg, Walter

This three story stucco presents a half story façade to the street and steps down the hill to become three stories on the western elevation. The roof is a series of low-raking gables which widely overhang the walls of this asymmetrical cruciform floor plan. The end beams are finished in scroll sawn carving. The entrance is recessed with woodcarvings around the front door. Massive stucco-faced chimney pierces the roof at the south with a pitched chimney cap. Twin front facing gables project on the front northern exposure; one houses a narrow single-car garage while the other a large segmented arch window of leaded, opaque, colored glass. Steilberg's first wife Rowena crafted the wood carvings around the entry door and was responsible for the sculptural detail on all of his early buildings.

11. 59 & 61 Panoramic Way (formerly 69 & 71) – TWO CONTRIBUTING: house;  
detached garage (a)

Year built: 1928-1929

Architect: Steilberg, Walter

Original owner: Atkinson, Florence

Architect: Moise, Howard

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A two story, single family, wood shingle clad structure with a low-raking gable roof, broad eaves and projecting end beams atop a concrete foundation, follows an L-shaped plan. The home was built into a triangular lot inside the first hair-pin turn on Panoramic Way, with a very shallow setback on the uphill side and nestled in among redwood trees. Steilberg composed the home to conform to the setting so that the southern wall is angled away from what is now a tree stump but would have been a mature tree when the house was designed. On the western facade a second redwood was used in place of a decorative pillar holding up a trellis over the half round portico containing a rooftop terrace. A stone retaining wall combines with a concrete retaining wall covered with wooden lattice curved to follow the contour of the hillside. Above the retaining wall is a terrace. A pergola gateway with wooden columns, tapering from bottom to top with hand carved cross braces, marks the entrance from the eastern side. The second story was designed in 1954 by architect Howard Moise although visual inspection does not reveal where the addition begins and ends. The house was later subdivided into two apartments with the entryway to one apartment on the eastern (uphill) side of the lot. The entryway is inset with a substantial wooden lintel where the original street number (#71) is carved. To the left of the entry is a window screened by six green glazed perforated Oriental tiles. Additional fenestration includes two-lite casement windows placed asymmetrically. A north-east corner window configuration groups three windows per side separated by natural redwood vertical supports and two incised horizontal bands at the top. A large, mullioned bay window dominates the south-facing elevation. A red brick chimney is prominent on the northwest elevation. A single-car wood frame garage is wedged into the narrowest part of the lot at Panoramic Way's first hairpin turn. Lattice work overlapping in squares atop wood siding gives the garage the appearance of an oversized Japanese jewel box; the effect is enhanced by ochre glazed perforated Oriental tiles on the eastern side and similar tiles glazed "Steilberg-green" on the western side.

12. 60 Panoramic Way – TWO CONTRIBUTING: house  
retaining wall (a)

Year built: 1913  
Contractor: Rowe, Henry  
Original owner: Moore, William J.

This two and one half story single-family dwelling is built on the uphill side of Panoramic Way near the first hairpin turn. The exterior is clad in natural wood shingle and topped by a front gabled roof with overhanging eaves which are supported by exposed roof beams. The chimney is clinker brick. On the first story of the western façade is a square bay with three double-hung windows consisting of multiple lites and an inset entry porch. The front door has a vertical inset panel flanked by side lites of diamond-paned leaded glass. The second story contains a pair of three-sided bay windows under a secondary hip-roof overhang. A stone retaining wall of local volcanic rhyolite about 4 feet in height wraps around the property line at the street, adjoining the retaining wall at 62 Panoramic Way. A flight of steep stone steps leads to the wooden entry porch.

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13. 62 Panoramic Way – TWO CONTRIBUTING: house  
detached garage (a)

Year built: 1908  
Designer/builder: Rowe, Henry  
Original owner: McDowell, Mrs. Laura

This two and one half story single-family gable roof house in natural wood shingle is built on the uphill side of Panoramic Way. The west-facing main entrance has been altered with salvaged nineteenth-century double French doors with a large four lite square transom above. The entire entry structure is a half-round two story tower topped by an enclosed balcony. The street level garage is integral to the concrete retaining wall and was structurally reinforced in the early 1990s, but maintains its' integrity. A pair of wooden side-hinged doors open out to the street.

14. 64 Panoramic Way – ONE CONTRIBUTING: house  
NON-CONTRIBUTING: garage and apartment – altered (a)

Year built: 1908  
Contractor: Rowe, Henry  
Original owner: Rountree, Mrs. E.

Two and one half story gabled roof shingle clad house has elaborately bracketed eaves. Built on the uphill side of Panoramic Way, the property is accessed by way of a concrete staircase shared with 66 Panoramic Way. Main entrance to house is on the north side, protected and defined by a gable-roofed open porch. Windows are undivided double-hung sash. A ground floor addition with a deck opening off the main floor is a non-contributing feature. Although constructed as income-property with apartments, it appears to be a single-family dwelling.

15. 65 & 67 Panoramic Way – TWO NON-CONTRIBUTING: house; [65 PWay]  
house [67 PWay] -  
later construction (c. 1964)

16. 66 Panoramic Way - ONE CONTRIBUTING: house

Year built: 1908  
Architects: Morgan, Julia and Hoover, Ira  
Original owner: Turner, Elsie Lee

This three story, brown shingled rectangular house sits on a concrete foundation beneath a complicated multi-level side-gabled roof with exposed rafter tails. The original gable roof entry porch has been enclosed. Built on the uphill side of Panoramic Way, the property is accessed by way of a concrete staircase shared with 64 Panoramic Way. Originally, a single family house, it now has



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multiple entrances to accommodate four apartments. The main and original entry is on the southside and accessed from the shared concrete landing. The gable entrance into 66 B, has overhanging eaves and support brackets; the brackets are decorated with a distinctive arrow pointing earthward. The second and third story exteriors are clad in stained wood shingles. The first story exterior is clad in clapboard siding with a pair of four-lite casement windows to the north and a pair of large picture windows to the south on the western facade. The second story has a flat bay with a single lite picture window flanked by two – four-lite casements. A long shallow shed dormer with a pair of four-lite casement windows dominates the western roofline on the third story. The dormer is supported by four carved wooden angle brackets. The fundamental contributing features remain intact, while alterations and additions are sympathetic.

17. 70 Panoramic Way – ONE NON-CONTRIBUTING: house – substantial alterations in 1960s

18. 72 Panoramic Way – TWO CONTRIBUTING: studio;  
fountain (a)

Year studio built: 1939  
Architect: Ratcliff, Robert  
Original owner: Ratcliff, Robert  
Year fountain built: 1939  
Sculptor: Paine, Robert

This small one story two room structure on the uphill side of Panoramic Way was built as a studio by and for architect Robert Ratcliff. The studio is clad in horizontal wood siding with a shed roof. Entry is through a Dutch door with a handcrafted doorknob. A brick chimney is on the back side. Reinforced concrete retaining walls along the steep side of the roadway open to reveal a split level concrete stairway and reinforced concrete railing containing a rectangular fish pond fed a constant supply of fresh water from the mouth/spout of a sculpted Poseidon-like character draining water from a natural spring in the hillside. The architect Walter Steilberg, while being interviewed by the architectural historian Sally Woodbridge, commented, "...it was only through the wisdom of Mr. Paine—Robert Paine, the sculptor, who was the father of Mrs. Robert Ratcliff—that the spring was drained. He made a fountain of it for their house and that, for the time being, put a stop to it. Water ran the year round; if he hadn't done that, we would have had more slides there."<sup>x</sup>

19. 74 Panoramic Way – ONE CONTRIBUTING: house

Year built: 1941-1952  
Architect: Ratcliff, Robert  
Original owner: Ratcliff, Robert

The low, horizontal lines of this single-family house are created by varnished clapboard siding, a split-level floor plan, and a shallow gable roof. Carefully tucked into a hairpin on Panoramic Way, the downhill side of the house is supported by a retaining wall, which also supports the road cut for

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Panoramic Way. The entrance from the downhill side of the second Panoramic Way hairpin is marked with a shallow, concrete urn supported by a base of pressed bricks stacked at cross angles with a garden stairway of the same brick. The house was built in several stages with significant additions in 1952 including a projecting glass stair tower at the south end. A series of six large square picture windows on the western facade is contrasted with minimal window openings on the eastern side. Variation in materials includes a sand-colored pressed brick chimney and a stucco covered chimney. An asymmetrical gable roof gradually becomes symmetrical.

20. 73, 75, 77 Panoramic Way – ONE CONTRIBUTING: apartment building

Year built: 1904  
Designer/builder: Broad, A.H.  
Original owner: Ford, Jerome C.

This three story rectangular structure with side gable roof on the downhill side of Panoramic Way is actually a three unit apartment building. Each floor of this brown-shingle, Craftsman style structure is a separate apartment with no interconnecting stairway, and each has its own entrance directly to the outdoors. The eastern façade has a small enclosed porch with two stacked shed roofs and a trellis composed of heavy beams and cross-members. Fenestration consists primarily of double-hung sash. Balconies upstairs and down dominate the western façade. A small north facing balcony provides the entry porch for the apartment below. A rustic wooden pulley rigged beside the balcony would have eased the transport of heavy items to the second floor residence. Wood sash windows have been replaced with aluminum but do not significantly diminish the structure's overall integrity.

21. 94 Panoramic Way – ONE CONTRIBUTING: house

Year built: 1917  
Owner/designer: Paine, Robert Treat  
Original owner: Paine, Robert Treat

This modest yet eclectic bungalow was designed by the sculptor Robert Treat Paine. Paine designed the bungalow with his love of ships in mind and lived here with his wife and two daughters throughout his adult life. The roofline has a delicate camber leaving the impression one is in the bow of a ship. Taking advantage of the cheapest materials, including salvaged wood, Paine used tarpaper for the exterior siding on the first story, alternating with post and beam wood panels. The north side is now sheathed in copper which was a renovation by Ratcliff family members during the past decade. [Paine's daughter Evelyn married Robert Ratcliff, and the bungalow remains in the Paine/Ratcliff family to this day.] A balcony is cantilevered over hand carved outlookers with flat scroll-sawn balustrades on the west side of the cabin. On the second story, the exterior perimeter consists of clapboard siding. A row of nine ribbon windows each with twelve small square lites, open the small 'master' bedroom to the majestic bay views. A second bedroom contains a northern wall of built-in bookshelves and end tables reminiscent of crew quarters in a ship's hold. The corners of the south wall of the upper story are cambered. A balcony at the front (east side) serves as a roof over the

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entry while ornamental scrolls on heavy wooden brackets support the balcony. A final feature of this unique home is the bronze door knocker of a sculptor with anvil declaring this the studio of Robert Treat Paine. Attached to the front door made of vertical planks with large metal studs, the doorknocker's existential inscription reads: "The bird of time has but a little way to fly and lo the bird is on the wing."

22. 101 Panoramic Way – ONE CONTRIBUTING: house and garage combination

Year built: 1931  
Architect: Steilberg, Walter  
Original owner: Ferguson, Mary Vaneveren

This three story Fabricrete single-family dwelling with an intersecting gable terracotta tile roof is located on the uphill side of Panoramic Way. The first story consists of a two-car garage designed with heavy fabric curtains in place of a door. Two stories of living space rise above the garage with the bedroom level below the main living area and entrance. The dwelling faces the Bay with the main entrance on the side accessed from Orchard Lane. On the other side of Orchard Lane is the main entrance of 107 Panoramic Way, and the two dwellings are complementary in Mediterranean and Spanish Revival idioms. The front door is accessed through a covered inset entryway; the low, small portal has a lintel above adorned with decorative scrolling. The heavy Fabricrete interior is remarkable for its barrel-vaulted ceiling in the living room. French doors from the living room open onto a balcony oriented toward the Bay and ornamented with Steilberg's signature, glazed, Oriental, perforated, ceramic tiles. The L-shaped plan with breadth in front has a kitchen wing in the back. Fenestration consists of steel sashes and casements. A three-sided bay on the southwest side has a tile hip roof and amber glass window panes. An addition in 1953 by architect Robert Ratcliff enclosed the north elevation porch and is the only alteration to the house. The addition is complementary although in the Ratcliff vernacular, as illustrated by frameless glass window slides.

23. 107 Panoramic Way – ONE CONTRIBUTING: house and garage combination

Year built: 1926; 1939  
Architect: Miller, Chester  
First owner: Bortweit, V.F.

This three and one half story single-family dwelling follows an L-shaped plan and borrows from Mediterranean, Pueblo, and Spanish Colonial Revival features including a flat roof with tile-covered eaves and a white stucco exterior. Situated on the uphill side of Panoramic Way, its main entrance is across from 101 Panoramic Way on Orchard Lane. The first story consists of a two-car garage cambered at 45 degree angles to connect the vertical and horizontal elements. Garage doors are tongue and groove and hinged on the side. The west elevation is dominated by an oversized casement window; a huge multi-paned picture window composed of three parts. The center is a vertical piece of unadorned glass flanked by tall narrow mullioned casement windows. The whole

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configuration is six panes high. The half story consists of a square penthouse room with pyramidal hip tile roof rising above the main flat roof. A round edge parapet wall simulates adobe construction. Windows have steel sashes of various shapes.

24. 1 Canyon Road – TWO CONTRIBUTING: house;  
Beaux-Arts stairway and retaining wall (a)

Year built: 1906  
Architect: Coxhead, Ernest  
Original owner: Torrey, Frederic

This three-story rectangular single-family dwelling with side-gable roof, overhanging eaves, and natural wood shingles, is built on the uphill side of Canyon Road at the back of its lot. Originally accessed by way of log steps, within several years the entrance stairway was formalized in a Beaux-Arts classical style designed by Henry Atkins in the vernacular of nearby Orchard Lane (see below). The steeply pitched gabled roof is punctuated by three dormers with broad sash windows. Two plain brick chimneys flank each side gable. The first story is dominated by a massive bay window supported by large wood brackets. Originally the front door was sited at the back of the house to maximize vistas of the bay, creek, and the UC Botanical Gardens from the interior. The house has since been reconfigured to accommodate several apartments. The entrance from the back has been relocated to the southern side where there is a large patio and pergola. An open loggia once extended off the dining room to the north. In the 1950's a sleeping porch on the main level was enclosed with double-hung aluminum windows. The exterior from the front is largely intact, and in general, the house retains its integrity.

25. 5 Canyon Road – ONE CONTRIBUTING: (1) garage and cottage combination

Year built: 1935  
Architect: Steilberg, Walter  
Original owner: Torrey, H.B.

A one-story brown shingle cottage atop a three-car Fabricrete garage was built on the uphill side of Canyon Road with no street setback. The garage is composed of three graceful ivy-covered doorless arches. The second story fenestration consists of three sets of wood windows, including a pair of casements flanked by two bays. The structure has a side-gable low pitched roof with overhanging eaves and a side entrance accessed from the same Beaux-Arts stairway to 1 Canyon Road.

26. 9 Canyon Road – ONE CONTRIBUTING: house;  
ONE NON-CONTRIBUTING: detached garage (a) – later construction

Year built: 1908, but extensively remodeled in 1920s  
Architect: Morgan, Julia, Ira Hoover, William C. Hays  
Architect: William C. Hays

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Original owner: Hutchinson, Lincoln

A two story rectangular single-family house with moderately pitched side gable roof; this dwelling was originally built as a brown shingle and redesigned after a fire in the 1920s when a story was added and the structure sheathed in stucco. Three great arches and a three-story tower of small paned windows dominate the west elevation with the former providing support for an open-air terrace above and the latter allowing ample light and views. Built on the uphill side of Canyon Road and at the back of the lot, the house is accessed by the classical concrete stairways shared with 1 Canyon and designed by Henry Atkins.

27. 15 Canyon Road – THREE CONTRIBUTING: house;  
detached garage (a)  
retaining wall (b)

Year built: 1904  
Architect: Coxhead, Ernest  
Original owner: Rieber, Charles

This massive three-story brown shingle is located at the base of the Panoramic Hill neighborhood and irregularly shaped to conform to the lateral curve of the hillside. The house was sited so as to afford direct and unimpeded views of the San Francisco Bay and Golden Gate as well as Strawberry Creek and the UC Botanical Gardens through the oversize bay windows. The steeply pitched side gable roof is punctuated by five steeply pitched gable dormers; clinker brick chimneys dominate the north and west elevations. A two story leaded glass window opens the interior staircase to northern light. Windows on the back are double-hung with diamond-paned leaded glass in upper sash. The main entrance is on the back side accessed by a winding brick path through a sheltered garden. A studio and terrace on the northeastern slope face the Bay and Canyon. A concrete retaining wall topped by tapered pillars supporting a trellis surrounds the property, and includes a single car garage cut within. Some superficial changes do not diminish the integrity of the overall structure. Originally single family, the house was subdivided into three units during World War II.

28. 33 Canyon Road - ONE CONTRIBUTING: house

Year built: 1907  
Owner/designer: Whitney, Albert<sup>xi</sup>

This single-family L-shaped home is clad in wood shingles under a low slung gable roof of wood shakes atop its original brick foundation. The main entry is from the south west side by way of a brick walkway. The living room forms the L-shape of this structure and appears to be a very old addition to the original rectangular structure. A modest wing with a shed roof on the back of the house has multiple light windows. Other fenestration is mainly composed of expansive casements with six small panes at the top; small eight paned windows near main entrance door; and four ribbon windows at attic level on the northern exposure. Located uphill of and accessible from Canyon Road via a steep

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path, the more convenient pedestrian access now that automobiles are used to access the neighborhood, is downhill from Mosswood Road and via Mosswood Lane. From Mosswood the house appears to be a modest one story structure, while the Canyon Road approach presents two and one half stories with panoramic views of Strawberry Canyon and the San Francisco Bay. The property flows to the terraced garden at 15 Canyon Road just below, which is separated by a modest weathered split-rail fence. A wood-framed single panel glass door on the eastside kitchen entrance and some minor window alterations on the eastern side do not negatively impact the overall integrity of the structure.

29. 37 Canyon Road – ONE NON CONTRIBUTING: house - later construction (c. 1969)

30. 39 Canyon Road – ONE NON CONTRIBUTING: house - later construction (c. 1971)

31. 45 Canyon Road - ONE CONTRIBUTING: house and garage combination

Year built: 1924

Architect: Steilberg, Walter

Original owner: O'Connor, Lenore

This small rectangular cottage with shallow street setback was the last of four cottages (see 47, 49, and 51 Canyon Road) built on one lot by owner Lenore O'Connor. Today the cottages are part of a condominium association with the grounds commonly maintained. Built at the base of the hill on a heavily wooded north facing slope and oriented toward Strawberry Canyon, the cottages blend into the site. Although similar in style (e.g. scroll-sawn balconies, combination horizontal siding/redwood shingle), each is unique and sensitive to the idiosyncrasies of individual sites. One unique feature of 45 Canyon Road is the complicated roof which is apparent especially from the perspective of the back and southwestern side where two sides of the roof come together to create an unusual triangular point for what is an otherwise  $\frac{1}{4}$  pitch gable roof. On the rustic exterior, the upper story is shingled whereas the main story is vertical boards with a cornered notch at the bottom of each board. The foundation is reinforced concrete and brick, and the chimney is also brick. Casement windows and a balcony with scroll-sawn railing are some of the features consistent with the other cottages. The garage doors of the two-car garage are paneled with small squares and rectangles and nearly gothic pointed windows, or cut-outs, which are now filled in with opaque material.

32. 47 Canyon Road - ONE CONTRIBUTING: house

Year built: 1927

Designer/builder: Lassing, T.F.

Original owner: O'Connor, Lenore

This cottage sitting at the back of the lot has completely rustic horizontal board siding and no shingles. Balconies, scroll-sawn porch railing, and a gable roof are compatible with details of

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neighboring cottages. A small modern addition does not detract from the structure's overall contribution.

33. 49 Canyon Road - ONE CONTRIBUTING: house

Year built: 1908  
Designer/builder: Lassing, T.F.  
Original owner: O'Connor, Lenore

Built in 1908 at the back of the lot, this cottage has rustic horizontal board siding below and board-and-batten above with all siding left alone, unpainted, weathered, and natural. Casement windows have small panels in a square plane. A penthouse story has interesting gable roof.

34. 51 Canyon Road - ONE CONTRIBUTING: house and garage combination

Year built: 1924  
Architect: Steilberg, Walter  
Original owner: O'Connor, Lenore

Built at the front of the lot with shallow street setback, this two story cottage with reinforced concrete and brick foundation has board and horizontal battens covering the first floor exterior and natural wood shingle covering the second floor exterior under a simple gable roof. The modest living quarters are located on the second story above a one car garage with hinged wooden barn doors enhanced by decorative window vents. The second story fenestration consists of a decoratively mullioned three panel with side lights and a multi-lite casement on the north and an expansive three panel French doors opening onto a side porch entry with scroll-sawn Swiss chalet style railings. In 1982, a sympathetic alteration converted a second garage to additional living space with two pairs of four light wooden windows and a street level entry under the second story porch. The alteration does not significantly alter the integrity of the structure.

35. 53 & 57 Canyon Road - ONE NON CONTRIBUTING: two unit building - later construction, 1970

36. 61 Canyon Road - ONE NON CONTRIBUTING: house - later construction (c. 1987)

37. 67 Canyon Road (formerly 51 Canyon Road) - TWO CONTRIBUTING: house;  
detached  
garage (a)

Year built: 1911  
Owner/designer: Stratton, George Malcolm<sup>xii</sup>

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This single family house rises three and a half stories from the street on the uphill side of Canyon Road; the bulk and mass is striking. The wood shingled structure has a double steeply pitched side gabled roof with overhanging eaves. The front gable has been altered by the addition of two large skylights facing north. The main entrance is on the west side by way of a concrete and brick stairway, made complex by many turns and levels. The west facing entry portal is defined by a Tudor-arched doorway, a built-in bench on one side, board and batten siding, and a single-paneled wooden door. A one story western wing off the main house has a side-gable roof. A second story open face balcony on the north side is supported by massive wooden brackets that, although sympathetic, are not original. Balcony railing was replaced with compatible modifications in 2003. Built on a sub-standard cul-de-sac with very shallow street setback and facing Strawberry Canyon, the house is bordered by a forest of coastal live oaks and bay trees in the undeveloped land known as the University of California at Berkeley's Ecological Study Area. The physical location at the base of the hill and at the geographic interface between the neighborhood and the University makes this house a socio-geographic landmark. A five foot high concrete retaining wall following the contours of Canyon Road has been recently retrofitted but maintains the original brick steps to the expansive entry. While the public side of the home is austere, the back side opens onto a lush terrace garden providing a private outdoor living area for the residents. Windows are mostly plain double hung sash. A window has been added to the street-side of the house on the floor below the main entrance. The overall structure retains its integrity. A one-car garage is built into a concrete retaining wall of the hillside is unaltered.

38. 4 Mosswood Lane - ONE CONTRIBUTING: cottage

Year built: 1930

Architect: Steilberg, Walter

Original owner: Steilberg, Walter

This one and one half story Mediterranean style cottage is built of Fabricrete with a shallow gable roof of terracotta tiles and was Steilberg's response to the devastating Berkeley Hills fire in 1923. This was meant to be a low cost home impermeable to fires and other disasters. The windows have steel sashes, the sills are tile. The only wood in the structure are the kitchen cabinets, the doors and bookshelves built-in beside the fireplace and the table in the breakfast nook. The cottage is accessible only by foot off Mosswood Lane and from the rear of the Steilberg family compound at 1 Orchard Lane and 1 Panoramic Way; the cottage is a hidden gem. A roof top terrace, accessed by a graceful curving substandard stairway, breaks the roofline on the front eastern elevation. Metal frame multi-lite windows are plentiful. A large picture window on the western façade allows an expansive bay view from the living room. An oversize fireplace in the living room provides heat throughout the house due to the foot thick concrete walls which have pigment rubbed in while still wet so that the interior never requires painting, which was another cost saving feature. Even the lighting fixtures were designed by Steilberg. Using capiz shells for the built in shades, a technique adapted from antique Chinese domestic paning, he felt they would be a low cost solution to lighting. The front door is similar to the one Steilberg designed for 6 Mosswood Road, that is, an arched doorway with leaded designs in colored glass. Venting is cleverly concealed behind Steilberg's trademark glazed green Oriental



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perforated tiles. The half story on the western elevation consists of a small bedroom or study accessed by a steep, gently curving interior stairway.

39. 6 Mosswood Road – ONE CONTRIBUTING: cottage and garage combination

Year built: 1924  
Architect: Steilberg, Walter  
Original owner: Mel, Charles

This two story Mediterranean style Fabricrete cottage with terra-cotta tile shed roof sits atop a foundation of five large archways forming five garage spaces with entry off of Mosswood Road on a sub-standard lot. A flat projecting bay window flanked by two four lite casements rests above two north west facing arches. An iron and glass balcony is buttressed by Fabricrete piers and centered above the fourth archway on the western façade accessed by multiple lite French doors. A side entry is tucked away, not visible from the street, and accessed by a concrete stairway shared by 8 and 10 Mosswood. The entry door is arched with leaded glass panes. In 2004, the two most southern garages were altered with the addition of side hinged custom built wooden barn doors, which are compatible with and do not detract from the whole, and replace original (but deteriorated) hanging curtains.

40. 8 Mosswood Road - ONE CONTRIBUTING: house

Year built: 1919  
Architect: Allen, Harris  
Original owner: Mel, Charles

This two and one half story home sits on the uphill side of Mosswood Road and behind 6 Mosswood Road and shares the entry stairs for 6 and 10 Mosswood Road. The exterior is finished in ship-lap siding on the first story and jazz stucco on the upper one and one half stories with a low gabled roof and overhanging eaves. The side entry is on the north under a gabled portico through an arched doorway.

41. 10 Mosswood Road – ONE NON CONTRIBUTING: house – significantly altered

42. 11 Mosswood Road - TWO CONTRIBUTING: house;  
cottage and garage combination (a)

Year garage-apartment built: 1925  
Year house built: 1929  
Architect: Morgan, Julia  
Original owner: Jepson, Willis

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This two story rectangular structure with stucco exterior and shallow hipped terracotta tile roof is one-room deep and symmetrical with single lite casement windows dominating all sides. The narrow depth and window dominance afford spectacular views of the bay from each room. Corner windows are canted on all four comers. The windows of the southeastern and southwestern elevations are arched, while all others are single or double rectangles. The back yard is terraced with a 10 foot high concrete retaining wall that edges the property and forms a privacy barrier between the garden and the public Mosswood Lane to the west. The front yard towards the east is level. The front gate located at the second switchback of Panoramic Way (where Mosswood Road begins) is a reminder of days when there were fewer cars navigating the switchback. Ironwork configured in a herbarium theme flank the front arched entry way door. Three fireplaces are distinctive, especially a carved "Herbarium Mantel" by Jules Suppo. The interior also boasts a single person "birdcage" elevator between the first and second stories. Exterior alterations include a wooden privacy fence and alternate gated entrance on the northeast side at the street as well as a sliding glass door which led to an outdoor balcony (later added and now dismantled) along the southwestern side of the house. The sliding doors are not visible from the street and therefore do not detract significantly from the overall integrity of the structure. The two car garage with small apartment above was originally built for Willis Jepson, renowned Botanist and UC Professor, while Julia Morgan completed the design and construction of his home at 11 Mosswood.<sup>xiii</sup> The apartment is a rectangular stucco structure with terracotta tile hipped roof. Fenestration consists of multi lite casement windows and a set of French doors opening to a small ornamental balcony on the southern exposure. Entry is gained from the west up a narrow flank of wooden stairs across a portico running the length of the second story western façade.

43. 13 Mosswood Road - TWO NON-CONTRIBUTING: house;  
retaining wall (a)

Year designed: 1939  
Year built: 1975  
Architect: Wright, Frank Lloyd  
Original owner: Feldman, Joseph

Built entirely with four materials – glass, wood, concrete, and brick - the exterior of this one-story is rust-colored custom-made brick on the street side and floor to ceiling walls of glass on the back and sides where panoramic bay views, terraces, and living spaces meet. A cantilevered roof creates a spacious carport and entrance at the front and provides cover for the terracing on the sides and back. The terrace has been expanded and carried toward the street while access to the terrace has been increased by replacing a window with a door. The downward sloping site is supported by a massive brick retaining wall that not only creates the terrace but is reminiscent of the retaining wall built sixty years earlier at 100 Arden Road (see photo 61.a.1). The horizontal lines of the house are strengthened by the rooflines, the brick pattern, and even a horizontal metal railing painted in rustic red. The interior board and batten walls are made entirely of California clear heart redwood; light fixtures and other interior detail are all original designs of Wright. Clerestory windows surrounded by a band of redwood cutouts serve as walls. The house was originally conceived in 1939 for Lewis N.

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Bell in Malibu but built at the Berkeley location in 1974. The posthumous project was authorized by Olgivanna Wright and overseen by Taliesin Foundation architects.<sup>xiv</sup> The design, materials and foundation were reworked to suit the northern California character of the new site. For example, "(t)hirty thousand bricks were specially made to the 2 ¼" Eastern U.S., rather than the 2 5/8" California, standard to fit Wright's 13" unit system, here applied to a two-foot-grid parallelogram module."<sup>xv</sup> The house is significant and its importance is underscored by the support of the Frank Lloyd Wright Building Conservancy. Ronald L. Scherubel, Executive Director of the organization has provided some explanation of the building's history and important qualities.

*In the late 1930s, Lewis N. Bell engaged Frank Lloyd Wright to design a house for him on a hilly Los Angeles site. Wright accepted the commission and the plans were completed in 1939 calling for a house of brick and native wood to be nestled into the Hollywood Hills near Mulholland Drive, commanding a sweeping view of Los Angeles. Regrettably, due to the high cost of the construction, the Bells did not proceed with the building of what would have been one of Mr. Wright's more charming, small, early Usonian houses. Wright and Taliesin retained the original drawings.*

*In 1974 Mr. And Mrs. Joe Feldman went to Taliesin looking for a Frank Lloyd Wright plan that they could build. After some deliberation with officials at Taliesin, including Kamal Amin, a senior architect and structural engineer with 23 years in the Taliesin Fellowship, Bruce Brooks Pfeiffer, currently head of the Frank Lloyd Wright Archives, and Olgivanna Wright, Wright's widow, they chose the plans for the Bell House as most appropriate for Joe Feldman's site.*

*The construction followed the original 1939 plans prepared by Wright, as closely as the more modern building and seismic codes would permit. California clear heart redwood is used in the board and batten walls and for trim. The most significant changes include flipping the plans into a mirror image of the original layout to better fit the new site, and constructing a more substantial retaining wall out of brick instead of board and batten. Being in an earthquake zone and on a very steep hill, the main challenge was to insert the necessary reinforcement to maintain the integrity of the aesthetics without the slightest of design changes. None of these modifications detract from the significance of the final structure.*

*The Feldman House is extremely significant in that it fills a gap in the record of Wright's actual built works, allowing architectural historians and students to see an important early step in Wright's development of the Usonian house, following so closely its introduction with the Jacobs 1 House in 1936, albeit through the eyes and talents of the Taliesin Architects' later adaptation. The house exhibits Wright's early genius for making a very small space seem so large and open. It was his first use of the hexagonal modular design in a smaller house, after its successful introduction in the much larger Hanna House in 1936. The hexagon form which almost eliminates corners, coupled with the expansive windows, allows the living space to flow out onto the deck making the interior space appear much larger than its square footage suggests.*

The Feldman House is not yet fifty years old and for that reason has been named a non-contributor. However, as the building approaches the fifty-year mark, it should be re-evaluated and, if integrity is maintained, re-classified as contributing.

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44. 14 Mosswood Road - FOUR CONTRIBUTING: house;  
detached garage (a)  
cottage (b)  
retaining wall (c)

Year house built: 1919  
Architect: Baird, Mabel R.  
Original owner: Baird, Robert H.  
Year garage built: 1936  
Architect: Steilberg, Walter  
Original owner: Hutchinson, Lincoln

Built on the uphill side of Mosswood Road, this rectangular brown shingle, two and one half story house is entered through a projecting covered porch. An early alteration, it is flanked on the street side with two evenly placed large square four lite stationary windows. Two pairs of French doors originally formed the entryway, which is the same door treatment for 16 Mosswood Road which was also designed by Mabel Baird. The current owner has (as a seismic upgrade) converted the entryway to a single pair of working French doors with a stationary side light utilizing the original doors in the conversion. However, this alteration has not adversely affected the integrity of the original design. A second story sleeping porch forms the wide dormer above the entrance and is inset with three casement windows. The back eastern facing wall of the house is tucked into the hillside. The architect made clever use of the natural features of the site by abutting a tiled terrace to the second story master bedroom. The terrace is reached through multi-lite French doors. Below the terrace, a servant's quarter is tucked off the kitchen entrance to the home. The roof is gabled, and the interior is sheathed in redwood. In 1936 the then owners commissioned Walter Steilberg to design a three car garage. Made of a patented method of making reinforced concrete known as Fabricrete (see section 7, Walter Steilberg), the garage is adorned with simple Art Deco inspired details on the façade. Above the garage is brown shingle north-facing studio with two projecting bay windows to the north, one to the east, and one to the west topped by a gabled roof with exposed rafter tails. A one room wood shingled guest cottage (approximately 9' x 14') conforms to the slope of the hillside and was added to the northeast of the property at approximately the same date as the garage. The cottage has a gently sloping gabled roof with exposed rafter tails and expansive windows on the north and south sides. The front west facing façade is only wide enough for the single entrance door flanked by decorative sidelites and one small single lite casement window. A natural, uncut rock retaining wall extends from the southwest property line to the northeasterly garage, following and defining the gentle curve of Mosswood Road. The entire property is enveloped in coastal live oaks, native shrubs and a few exotics.<sup>xvi</sup>

45. 16 Mosswood Road - ONE CONTRIBUTING: house

Year built: 1922  
Owner/designer: Baird, Mabel R.

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This square-shaped Arts & Crafts influenced bungalow has a rustic exterior being clad in natural wood shingled siding above a concrete foundation for two stories and wide board and narrow batten for the top half story. The roof is a gently sloping gable with exposed rafter tails. The west facing entrance façade of the home is fully symmetrical; four pair of wood casement windows containing eight lites per window are placed two pair on each side of an entry way of ten lite French doors. A second story cantilevered balcony with closely spaced vertical wood spindles projects over the front entrance. The second story west facing facade continues the symmetry with double French doors placed center to the façade and opening to the balcony and flanked by projecting bay windows framed on either side by eight-lite casement windows. The third or half story has one centered eight-lite casement window. A clinker brick fireplace and chimney is visible on the northwest side of the structure. From the rear the home conforms to the sloping hillside and appears to be a single story cottage with entry accessed through a sleeping porch containing four single pane sliding ribbon windows on the front and two sets of triple casement windows on the north and south sides of the porch. Sheltered from the street at the end of a 100' long, steep, ascending path, the house is situated above and behind 14 Mosswood, surrounded by coastal live oaks and bays laurels, yet opened to panoramic views of the Golden Gate Bridge, the Campanile and the surrounding Berkeley hills.

46. 20 Mosswood Road - TWO NON-CONTRIBUTING: house;  
detached garage (a) –  
later construction (c. 2000)

47. 21 Mosswood Road - TWO CONTRIBUTING: house;  
detached garage (a)

Year house built: 1895  
Builder: unknown  
Original owner: Mouser, Silas  
Year moved and remodeled: 1910  
Architect: Thomas, John Hudson  
Owner: Parsons, Edward T.  
Year garage built: 1924

This single-family, two story dwelling was originally a white clapboard farmhouse located where 11 Mosswood Road now stands. In 1910, the house was relocated to its current site and remodeled in the Arts and Crafts style. Close to the road with a very shallow street setback, the exterior is clad in redwood shingles. The shingles are even with the sash, and the windows have no visible frame. The interior was remodeled, and except for the kitchen, the first floor walls and ceiling were paneled in redwood throughout. Open-faced balconies orient to the north and the canyon below. Expansive picture windows on the southwestern corner provide views of the bay and on the north provide views of the canyon. The street side of the house has smaller rectangular single lite casement windows arranged symmetrically on either side of the entry way. The entry door is multi-lite beveled glass protected by a copper sheathed awning which forms the support for a second story bay window.

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48. 29 Mosswood Road - TWO CONTRIBUTING: house;  
detached garage (a)

Year built: 1921  
Architect: Steilberg, Walter  
Original owner: Parsons, Marion

This two and one half story brown-shingle home is a large rectangle upon a concrete foundation. A low-hipped roof surmounts the design and widely overhangs the building in various places. Sited facing the downhill side of Mosswood Road, the home is two stories on the front elevation and three full stories on the rear (facing Strawberry Canyon).

"The walls have a massive, 'bearing' quality because of the relatively small ratio of window to wall area, but the fenestration forms the principal element of articulation for the design. The windows are of varying dimensions, and give an 'at-random' quality to the rear elevation. Banked casements are used exclusively on the upper story. Large fixed-sash picture windows are found on rear." HRI The main floor interior is almost exclusively finely finished redwood board and batten on both walls and ceilings. An original sleeping porch with accordion wood sash windows is maintained on the northern (canyon side) of the second story. In 1985, the kitchen was enlarged and a family room was added to the north eastern side of the home but the addition is sympathetic (including a hipped roof and redwood shingle siding) with the original structure and does not detract from the overall integrity. Built just prior to the devastating North Berkeley fire of 1923, this home still has the original roof top sprinkler system, installed by the owners after 1923 to protect against future catastrophe. A two-car garage, clad in brown-shingle, on two story high stilts, was built as part of the same project. The garage has a side gable and a shed roof off the back with a pair of casement windows that open to the canyon. On the east side wall, window openings are filled with green, glazed, perforated Oriental tiles. Plain, stained, wood doors are recent additions.

49. 37 Mosswood Road - TWO CONTRIBUTING: house;  
retaining wall (a)

Year built: 1911  
Architect: Ratcliff, Walter H. Jr.  
Original owner: Allen, James T. Allen

Built on the downhill side of Mosswood Road, the three story brown shingle rectangular house has a steeply pitched side-gable roof, a steeply pitched front gable over the inset front porch, and gables over each of the windows on the top floor. The house is symmetrical with the entrance centered in the front and rows of multi-paned casement windows on each side. A substantial battered concrete foundation supports the structure. A curved roofline graces one upstairs deck which is enclosed on two sides and suitable for sleeping. This house is on the edge of the neighborhood, sited above and behind 67 Canyon Road and borders the University's Ecological Study Area. An open faced balcony opens off the northern exposed canyon side of the house and next to the adjacent oak-bay woodlands of the Ecological Study Area. In general, windows are large and plentiful serving to bring nature inside; in the living room, each sash of the large casement windows is divided into ten panes. The east elevation dining room has a large rectangular picture window overlooking the oak-bay

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woodlands next door. From the street, the brick stairway and retaining wall gracefully curves to follow the contours of the hillside and forms a built-in brick bench as it reaches the front entryway. The original plans show a trellis at the entrance, but that was before the oak trees were mature on this north facing lot. Some windows have been added to the side and back on the eastern and southern corner of the main floor, but otherwise the exterior is unaltered.

The University land next door was not then known as the Ecological Study Area. However, it was a preserve where "no shooting is allowed at any season..."<sup>xvii</sup> and the grounds of 37 Mosswood were part of that larger landscape. As described by Mrs. Amelia Sanborn Allen, "Our house is in the middle of a dense grove of young live-oak trees, on the southern wall of the canyon opposite the University dairy, and to the south and west of the swimming pool."<sup>xviii</sup> The landscape of 37 Mosswood Road and the adjacent University land remains much the same today.

50. 38 Mosswood Road – ONE CONTRIBUTING: house

Year built: 1915

Owner/designer: Parker, Carleton

This three story roughly square structure is sided with natural wood barn shakes under a flat roof with overhanging eaves. The dwelling steps steeply down the hillside from Arden Road although its address is Mosswood Road, and its entrance is off the Arden Steps. The second story entrance is from a side porch with a balcony above. Fenestration consists of single lite casement windows and two picture windows on the western exposure claiming views of the Golden Gate from the second story living room. Cantilevered porches on the northern exposure of the first and second stories overlook Strawberry Canyon. The third story back of the house is at street level with access from the cul-de-sac at Arden Road adjacent to the massive clinker brick retaining wall for 100 Arden Road. After a fire in the 1940's the original steeply pitched gable roof was replaced with the current flat roof and broad eaves. In 1982, a deck was added to the first story on the northern (canyon) side of the house of house. The alterations do not substantially detract from the integrity of the dwelling.

51. 1 Orchard Lane - ONE CONTRIBUTING: house

Year built: 1922

Architect: Steilberg, Walter

Original owner: Steilberg, Walter

This three-story, 12-room single family house was the principal residence (and one of three related structures) for Walter Steilberg and his family (rf. 1 Panoramic Way and 4 Mosswood Lane). The exterior is finished in unpainted/unstained redwood shingles and rose-colored stucco. Green painted window trim matches the green of the surrounding almond trees, whereas the underside of the eaves was once sky blue. An octagonal tower dominates the western façade; the third story of which has a balustrade formed by his trademark glazed green Oriental perforated tiles. Exemplifying the relationship of the building and its site, "the house climbs a slope with each story opening onto

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terraces or decks, with glass doors echoing the fenestration." "...glass dining room with mirror doors on east wall reflecting the bay view. This room is duplicated on the third story but here a bank of glazed perforated Chinese tiles forms a balustrade. Architectural features include mullions of amber glass, elaborate and expansive fenestration, custom-designed lighting fixtures, door handles, and paint custom-ordered to match outdoor colors. The south wing was built as bedrooms and the top-floor (east) porch was enclosed in 1927. Expansion of the top floor, south-facing study in 1945-46 involved changing the small peaked-roof space to a 10'x12' flat-roofed space suitable for use as a bedroom. At about the same time, an outside door (glass-paned) was added to a corner of the north, second-floor bedroom, in order to ease access to that room which was being converted to Steilberg's office. The original wood shingle roof has been replaced with composition shingle.

52. 3 Orchard Lane – TWO CONTRIBUTING: house;  
retaining wall (a)

Year built: 1915  
Architect: Bangs, E. Geoffrey  
Original owner: unknown

This rectangular two story wooden structure with wood shingle siding stained a dark brown has a gently gabled roof. The house conforms to the hillside, and its second story roofline is on grade with the switchback where Panoramic Way intersects Mosswood Road. The fenestration consists primarily of large picture windows, commanding expansive views of the Golden Gate. Some wooden windows have been replaced by aluminum but size and locations remain as originally built. A second story portico is reached by a pair of large French doors and is shielded from the western exposure by a generous pergola. The property is accessible by foot in three ways - from the west via Mosswood Lane, from the south via a classical entrance marked by a delicately painted #3 on a pillar mid-way up Orchard Lane, or from the south east by way of the topmost landing of Orchard Lane as it meets Panoramic Way at the Mosswood intersection. Built five years after the completion of Orchard Lane, the main entrance was then from Orchard Lane and designed in the beaux-arts style. The design is carried through to two terraces that wrap around the back of the house mimicking the pattern of the classical balustrades.<sup>xix</sup> The retaining wall to this terrace can be seen from Mosswood Lane below. The main entrance to the 3 Orchard Lane is from Orchard Lane and the design of the private staircase is in the beaux-arts style in keeping with the vernacular of the public staircase. The terrace is likewise designed in the Beaux-arts style and is graced with concrete balustrades supported by two massive curved retaining walls one of which can be seen from Mosswood Lane below. The similarity of design between the Beaux-arts staircase at 3 Orchard Lane and Orchard Lane itself makes the private entrance appear to be a branch of Orchard Lane.<sup>xx</sup>

53. 19 Orchard Lane – ONE CONTRIBUTING: cottage

Year built: 1950.  
Builder: Jevans, J.H.  
Original owner: Bush, Philip



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This small (26' x 26') one and one-half story cottage with its flat, tar and gravel roof is accessible solely by foot, by way of the public Orchard Lane steps. The small, simple box-like structure is unobtrusive as it descends the hillside upon which it is built. The southern and eastern facades are devoid of fenestration. The original entry door situated next to the red brick chimney on the southern façade is no longer used and has been replaced with clapboard siding to match the rest of the cottage and does not adversely affect the integrity of the structure. Entry is through a private gateway via the deck which runs the length of the western façade. The western façade is dominated by French doors providing panoramic bay views and entry to the cottage. Two small fixed rectangular wood windows on the northern façade comprise the only other fenestration. The cottage sits atop a cistern formerly used as a reservoir fed by an underground spring. The redwood clapboard siding has been painted brown and is illustrative of the Second Bay Region Style.

54. 21 Orchard Lane – ONE CONTRIBUTING: cottage

Year built: 1949  
Builder: Brodhoff, C.O.  
Original owner: Parker, Alfred

This rectangular one and one-half story cottage is clad in redwood clapboard stained a dark brown. The shallow pitched gable roof is notched in the southeastern corner in order to accommodate a mature coastal live oak tree but is otherwise symmetrical. The cottage is accessible only by foot by way of the Orchard Lane steps. The unadorned entrance to the house faces the hillside to the east under a small shed roof. The western façade is dominated by three pairs of eight-lite casement windows which open the cottage up to the panoramic bay view. A large clinker brick chimney and a single eight-lite casement window dominate the southern exposure visible from the Orchard Lane path. This cottage casually combines elements from both First and Second Bay Region Styles into a small, unified whole.

55. 59 Arden Road (formerly 30 Arden Road) - ONE CONTRIBUTING: house

Year house built: 1912  
Builder: Junk-Riddle Co.  
Year garage built: 1924  
Original owner: Washburn, O.M.

This two and one half story rectangular wood shingled home with gabled roof, exposed rafter tails, broad eaves and angled support brackets for the beam ends, is mostly hidden from Arden Road. The main entrance on the south side of the dwelling is from Arden but the home is most visible from the Orchard Lane steps on the north side. The western façade is open to light and bay views through wide double hung sash windows wherein the upper sash is divided vertically into four panes. A sun room with a band of windows brings in light from the west, and a square bay window with shed roof opens the house to wooded views on the south elevation. The chimney is clad in concrete. Minor exterior alterations include replacement of two upstairs windows without vertical lites and the addition

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of an attached garage of hollow tile sometime prior to 1929. The garage is compatible and does not detract from the overall integrity of the home. The original house burned to the ground on December 26, 1912 and was rebuilt soon thereafter.

56. 65 Arden Road - ONE CONTRIBUTING: house

Year built: 1935  
Architect: Steilberg, Walter  
Original owner: Parker, Alfred

This L-shaped natural barn-shingled home with hipped roof and wide overhanging eaves has a shallow street setback as it steps down the western slope of the hillside from Arden Road. The front of the house is dominated by a two car garage which abuts the house to form the L. The garage is closed from the street by undistinguished redwood doors. A small brick terrace enclosed by a wooden fence and gate leads to the main entry door protected by a shed roof projecting from the garage wing. There are no windows on the street side and main entrance. The only ornamentation is found on the entry door where a small privacy window is carved in an "Oriental" motif. From Arden Road the home appears to be a one story cottage attached to a large garage. From the Orchard Lane approach the house is three stories tall and is dominated by a three sided turret like structure with double single lite casement windows in each face of the turret, giving commanding views of the Bay to the west. A side second story entrance is located off of Orchard Lane.

57. 70 Arden Road - ONE CONTRIBUTING: house and garage combination

Year built: 1939  
Architect: Wurster, William  
Original owner: Gardner, Eleanor

This rectangular wood siding and stucco two story home runs parallel to the street in a shallow L configuration. The second story living space above a line of four single stall garages on the street level has a flat roof with overhanging eaves. The main entrance is from the north side in a recessed alcove barely visible from the street. Built on the uphill side of Arden Road three very large casement windows on the western façade provide an expansive view of the bay. The stucco has had an ochre pigment added before application. A projecting balcony with horizontal board on its face runs the entire length of the western facade. Redwood garage doors are compatible. This home is a fine example of Second Bay Region Style architecture.

58. 76 Arden Road - ONE CONTRIBUTING: house

Year built: 1925  
Contractor: Mason-McDuffie Co. Designer unknown  
Original owner: Bradley, H.W.  
Interior second unit; 1939

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Architect: Wurster, William

This two and one half story box style Mediterranean-influenced stucco over wood two-story structure has a flat recessed roof and is on the uphill side of Arden Road facing the Bay. The main entry is from the south side up two flights of steep concrete steps. Two large picture windows each flanked by casements dominate the western façade, one window per story. The second story window is enhanced by an inset in the stucco wall above in the shape of a elongated half oval. The half story basement was converted to a second unit in the 1940s and designed by William Wurster. The unit has characteristic modern features such as a cement floor in bathroom and kitchen, plywood paneling on the walls, and a Celotex ceiling.

59. 89 Arden Road – ONE NON-CONTRIBUTING; house remodeled extensively in 1991.

60. 95 & 99 Arden Road - ONE NON-CONTRIBUTING: duplex - later construction (c. 1953)

61. 100 Arden Road (formerly 47 Arden Road)- THREE CONTRIBUTING: house;  
detached garage (a)  
retaining wall (b)

Year built: 1915

Designer/owner: Hersam, Ernest A.

This imposing two and one half story rectangular structure is sheathed in natural wood shingles and sits on a concrete foundation under a side gabled roof with wide over-hanging eaves and exposed rafter tails. A remarkable clinker brick retaining wall and entry way envelops the property and presents an inviting though fortress-like effect as it follows the gentle curve of the Arden Road cul-de-sac. Several landings twist and turn to reach the main entrance on the south side of the property where a pitched gable porch roof protects the classic Craftsman door from the direct sun. To the left of the entrance is a secondary retaining wall with clinker brick buttresses forming the border for a garden and a built-in clinker brick bench. Fenestration consists of three large square picture windows dominating the western façade opening the living room to spectacular bay views. On the second story, double hung sash windows have six lites in each of the top sashes, and a balcony is supported by wooden angle brackets. Inside the house, walls and ceilings are paneled in unstained clear-heart redwood. The garage is built into the hillside and faced by the clinker brick retaining wall with a high-opening arched doorway and an unremarkable wooden door.

<sup>i</sup> Siegel and Strain, Architects, Historic Structure Report California Memorial Stadium (Berkeley: University of California Office of Planning, Design, and Construction, 1999), p. 13.

<sup>ii</sup> Suzanne B. Riess, editor, *The Julia Morgan Architectural History Project* Vol. 1 (Berkeley: The Regents of the University of California, 1976), p. 109-110.

<sup>iii</sup> Gray Allen Brechin, *Berkeley Urban Conservation Survey* (BAHA); Marilyn Wright Ford, "Panoramic Hill: The Early Days," in *Panoramic Hill: Berkeley's Most Romantic Neighborhood*, revised edition (Berkeley: BAHA, 1996), pp. 1-2; Riess, p. 104.

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- <sup>iv</sup> Frank Soulé, Jr., Map of Strawberry Valley and Vicinity – *Showing the Natural Sources of the Water Supply of The University of California With proposed System of Reservoirs, distributing Pipes, etc.*, 1875.
- <sup>v</sup> Berkeley Urban Conservation Survey (Berkeley: Berkeley Architectural Heritage Association, 1977).
- <sup>vi</sup> Not shown on 1911 Sanborn maps but building altered in 1921.
- <sup>vii</sup> A search of building permits, zoning permits, finance records, and BAHA files found no information about original owner or architect.
- <sup>viii</sup> Warren and Lorna Byrne, *Notes on the Exterior* (Berkeley: Berkeley Architectural Heritage Association, block 10-1861, 2004).
- <sup>ix</sup> Soulé.
- <sup>x</sup> Riess, p. 103
- <sup>xi</sup> Interview of Florence Stratton Reinke by Anthony Bruce and Lesley Emmington-Jones (Berkeley: Berkeley Architectural Heritage Association, audio tape, October 1977).
- <sup>xii</sup> Ibid.
- <sup>xiii</sup> Interview of Howard Mel by Fredrica Drotos, 10/30/04.
- <sup>xiv</sup> Interview of Jeanne Allen by Janice Thomas, 10/30/04.
- <sup>xv</sup> William Allin Storrer, *The Architecture of Frank Lloyd Wright: A Complete Catalog*, 2<sup>nd</sup> ed. (Cambridge, Massachusetts: The MIT Press, 1991) A436.
- <sup>xvi</sup> Interview of Hilary Bendich by Fredrica Drotos, 11/8/04.
- <sup>xvii</sup> Amelia Sanborn Allen, "Birds of a Berkeley Hillside," in *The Condor* Vol. XVII (March 1915), p. 79.
- <sup>xviii</sup> Allen, p. 78.
- <sup>xix</sup> Interview of Jane Bendix, current owner of 3 Orchard Lane, by Janice Thomas on 10/23/04. Mrs. Bendix described a watercolor of the exterior of her house which was signed by Bernard Maybeck. She believes he had a role in designing her house.
- <sup>xx</sup> Ibid.

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**SUMMARY**

The Panoramic Hill Historic District is eligible for the National Register of Historic Places under criterion C at the local level of significance. Under criterion C, Panoramic Hill is significant in the area of Architecture as a neighborhood that represents the Bay Area Tradition in architecture, primarily the first phase associated with the Arts and Crafts Movement. The district includes notable houses by architects Ernest Coxhead, Bernard Maybeck, Julia Morgan, Walter Steilberg, and others; a distinctive street plan; and paths and steps that provide pedestrian circulation. Since the north side fire of 1923, Panoramic Hill is among the most extensive surviving Arts and Crafts neighborhoods in Berkeley, which was the Northern California center of this important early twentieth century architectural movement. The district is significant for the period from 1901, when the first home was constructed, through 1950. Construction of significant new buildings dwindled during the 1940s and had virtually ended by that later date. A few significant architect-designed alterations took place to existing homes in the early 1950s. One home, the Feldman House at 13 Mosswood Road, was constructed in 1975 from a 1939 Frank Lloyd Wright design.

**HISTORIC CONTEXT**

**Architecture**

Late nineteenth-century California residential architecture for the middle and upper middle classes was characterized for the most part by repetitive floor plans, wood construction, and decorated interior and exterior surfaces. These decorated surfaces reflected the possibilities suggested by mass produced illustrations and realized by steam-driven machinery in wood-working factories more than they did any conscious aesthetic ideas. Painted houses of this sort line the streets of Berkeley's new neighborhoods that were expanding with the University of California, notably the College Homestead tract on the south side of the campus, the principal residential neighborhood for the University. In later years, houses like these came to be identified collectively as "Victorian," or labeled by stylistic terms as Italianate, Eastlake, or Queen Anne.

Victorian Berkeley was little different from Victorian neighborhoods throughout California and the rest of the United States. Likewise, Victorian America had many similarities with comparable districts of Europe and other industrialized countries. The common ingredient in all of these places was the recent and rapid industrialization of societies. Everywhere, industrialization resulted in a growing middle class and, at the same time, a growing gap between those who could afford to live comfortably and those who struggled in poverty. The architecture we now call Victorian was developed to accommodate those who benefited

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materially from industrialization. The plentiful and conspicuous architecture of Victorian houses struck many as a symbol of the age, for both good and bad.

In England, where the differences between rich and poor were particularly strong, and the differences between middle class neighborhoods and working class slums were particularly evident, powerful critics focused their attacks – and solutions – on architecture. John Ruskin and William Morris saw the middle ages as the last great period for architecture, which went into decline with the Renaissance and sunk to its nadir during the Industrial Revolution in the nineteenth century. Since the middle ages, when skilled craftsmen were directly responsible for the creation of beautiful buildings, industrialization had resulted in the estrangement of workers from their work and in the consequent ugliness of buildings and cities.

Out of this critique, and the examples of William Morris, came the Arts and Crafts Movement. This movement began in England and subsequently spread to the United States and other industrialized countries. It sought to replace mass-produced, machine-made architecture whose appearance alienated people from society with hand crafted architecture whose appearance helped to unify producers and users of architecture, among different elements of society.

The Arts and Crafts movement influenced progressive architects and clients in cities throughout the United States – although usually more for its architectural than its social aspects. The work of H.H. Richardson and Frank Lloyd Wright, the Shingle Style in New York and New England, the Mission Revival, and other regional expressions all reflected aspects of the ideas and imagery of the Arts and Crafts movement in various ways. However, nowhere did the Arts and Crafts movement emerge more directly than in the San Francisco Bay Area, and nowhere did it flourish more extensively than in Berkeley.

Arts and Crafts ideas were introduced to the San Francisco Bay Area by Joseph Worcester, a Swedenborgian minister who cultivated “rustic qualities” in a house in Piedmont in 1876 and in four shingled houses on top of Russian Hill in San Francisco in 1888-1889.<sup>1</sup> These were followed in the 1890s by the generally scattered work of four recently arrived architects to the Bay Area – Ernest Coxhead, Willis Polk, A.C. Schweinfurth, and Bernard Maybeck. Trained in different ways, beginning in the late 1880s these sophisticated architects introduced to the region buildings with a new kind of imagery for clients who shared their rejection of the architectural mainstream. Although each architect had a distinctive approach, the four produced buildings with certain common characteristics – unpainted redwood structures often clad in shingles, reliance on vernacular sources (of various kinds, including California barns and working buildings, California Missions, English country architecture, and the architecture of rural northern France), hand craftsmanship (ironically, most of these houses were just as dependent on industrial processes and machine-driven tools as were those in Victorian styles), and compositions of contradictory volumes, surfaces, and details.

In the mid 1890s, the groundwork was laid for a broader impact of Arts and Crafts ideas and of the work of these architects. A house designed by Maybeck for himself lead to another

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designed for his friend, the poet, Charles Keeler, and subsequently to several others near Keeler's house on Highland Place in north Berkeley. In the development of these houses, Maybeck and Keeler promoted a radical view of residential architecture, with simple houses built in harmony with nature. These ideas were given a forum with the establishment of the Hillside Club in 1898 – at first a women's club which met in Schweinfurth's shingled Unitarian Church on the south side of the campus. Reorganized by Maybeck and Keeler to include men in 1902, the Hillside Club functioned as a persuasive force for the dissemination of Arts and Crafts ideas in Berkeley. The publication in 1904 of the *Simple Home* by Keeler made these ideas more coherent and more widely available. From Keeler's book and Berkeley's example, progressive architects and clients built neighborhoods of rustic, unpainted, wood houses that blended with their natural settings on streets laid out to minimize disruption to the typically hilly topography. These neighborhoods formed a sharp contrast to more ordinary districts of painted houses on regular lots, whose landscaping and decoration emphasized both their separation from nature and their origins in industrial society.

Beginning around the turn of the century, enclaves of Arts and Crafts houses began to develop in scattered parts of the San Francisco Bay Area. While the largest such neighborhood was on the north side of Berkeley, others developed on the south side along Panoramic Way and Hillside Court; along Edgewood Avenue in San Francisco; in the Professorville neighborhood in Palo Alto and in Mill Valley, Sausalito, Ross, and San Anselmo in Marin County. In addition, Pacific Avenue where it faces the Presidio in San Francisco, was built as an urban version of what was generally a suburban development.

Mostly begun in the early 1900s, these neighborhoods of Arts and Crafts houses were built up with a consistent character during the 1910s and 1920s. Where there was room for infill buildings, or where there was room to expand, these neighborhoods grew in later decades in ways that were stylistically different but, at the same time, similar in important underlying ways. The results were often neighborhoods that were stylistically diverse but still harmonious and cohesive, unified by the use of materials, relationships to the natural setting, reference to vernacular sources, and employment of architectural contradictions. In retrospect, scholars have identified a Bay Area Tradition in architecture that, through a series of phases, encompasses a variety of styles.<sup>ii</sup>

Following the first phase of the Bay Area Tradition, characterized by two generations of Arts and Crafts architecture designed by Coxhead, Polk, Schweinfurth, Maybeck, Julia Morgan, Louis Christian Mullgardt, John Hudson Thomas, and others, were two later phases. The second phase from the 1920s to 1950s drew on the imagery of small cottages based on northern European vernacular designs; the historical vernaculars of California in wood and stucco – Spanish Colonial, Monterey, and rural farms; and a regional modernism, typified by the work of William Wurster. The third phase, of the 1960s to 1970s, was characterized by the work of architects Charles Moore, Donlyn Lyndon, William Turnbull, and Joseph Esherick. The emblematic project of this phase was Sea Ranch, inspired both by rural California barns and by the work of the modern architect, Louis Kahn.

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In neighborhoods that were established in the first (Arts and Crafts) phase of the Bay Area Tradition, infill and additions to the neighborhood with buildings from subsequent phases was common and typically resulted in still-compatible neighborhoods. The original north Berkeley Hillside Club neighborhood was largely destroyed by a devastating fire in 1923. Wood and stucco houses representing both the first and second phases of the Bay Area Tradition were rebuilt around remnant clusters (for example, along Buena Vista Road) of early Arts and Crafts era houses. On Panoramic Hill, houses from the second phase of the Bay Area Tradition were built on infill lots and up the hill to the east of the original cluster of Arts and Crafts era houses. In these cases and elsewhere, the neighborhoods have remained coherent ensembles through decades of development and change.

**Architects**

**Bernard Maybeck (1862-1957)**

Bernard Maybeck was born in New York City in 1862, the son of German immigrants. His father's training in Flemish and Dutch cabinet making and specialization in wood carving, along with his own education at the Deutsche-Americanische Schule, deeply influenced the future aesthetic of Bernard Maybeck's architecture. In 1881, Maybeck set sail for Paris, where he studied at the Ecole des Beaux-Arts. In 1886, after five years in Paris, Maybeck returned to the United States and joined the firm of Carrère and Hastings in New York. In 1889 he came to the Bay Area, and eventually joined the offices of A. Page Brown, the most prestigious architectural firm in San Francisco. In 1894 he joined the Department of Instrumental Drawing at the University of California in Berkeley, a move that forever changed Maybeck's career. The largely rural town of Berkeley, with its beautiful hillsides and sweeping vistas of the Bay Area proved to be the perfect canvas for Maybeck to develop his love for German and Dutch medieval architecture, to foster the growth of the Arts and Crafts movement in California. Over the next several decades, Maybeck developed a reputation as an eccentric artist and became one of the most influential voices of the Hillside Club and residential development of Berkeley and the Bay Area. He mentored numerous aspiring architects, including Julia Morgan and Lillian Bridgman, and designed some of the most significant works of architecture in the Bay Area, including the First Church of Christ, Scientist, in Berkeley, and the Palace of the Fine Arts in San Francisco. Maybeck died on October 3, 1957 at the age of 95.<sup>iii</sup>

On Panoramic Hill, Maybeck designed the single-family dwelling at 23 Panoramic Way. The Swiss-chalet style home was designed in 1901 for law professor George Boke. The Boke House, as it has come to be known, has been copied twice there being one on Mather Street in Oakland and another in Aberdeen, Washington.<sup>iv</sup> Although the houses were built from the Boke house plans, which Maybeck had himself sold, he did not supervise construction of the Oakland and Aberdeen structures, and as a result, there are subtle differences in detail from the original.<sup>v</sup>



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### Ernest Coxhead (1863-1933)

Ernest Coxhead was born in Eastbourne, England in 1863. He trained at the Royal Academy and Architectural Association in London. He and his brother, Almeric, immigrated to Los Angeles, California, in 1886, where they opened an architectural practice together. Three years later, they relocated to San Francisco, where Coxhead stayed until his death in 1933. Inspired by the natural beauty of the Bay Area and influenced by the English arts-and-crafts movement's search for "truth" in design, Coxhead aspired to create a regional style that celebrated and respected the natural surroundings of the area. He favored English country architecture in his domestic designs - steeply pitched roofs, restrained informal exteriors that offered few clues to the interior design, formal interiors, and asymmetrical floor plans that lent themselves to elements of surprise and freedom of expression. His early houses were clad with brown shingles, and although shingled houses had long been popular in the American suburban and rural landscape, he, along with such contemporaries as Willis Polk, A.C. Schweinfurth, and Bernard Maybeck, was responsible for bringing idealized rustic beauty to an urban environment. A trip to Europe, with a stop en route at the World's Columbian Exposition in Chicago, along with America's growing interest in classicism and Beaux-Arts architecture, influenced Coxhead's later, larger houses, but their impact did not have the same reach as his earlier, shingle homes. Coxhead died in Berkeley in 1933.<sup>vi</sup>

On Panoramic Hill, Coxhead designed two brown shingle single-family dwellings during the first decade of the 20<sup>th</sup> century. Both were located on Canyon Road before Strawberry Creek had been culverted and the stadium built. The first of these Coxhead-designed houses was built in 1904 for Professor of Logic and Rhetoric Charles Rieber at 15 Canyon Road. The site sensitive design conforms to the lateral curvature of the hillside and its footprint is U-shaped and slightly akimbo as it wraps around the hill. The orientations of this complicated footprint are to both the bay and the canyon where Strawberry Creek flowed. A courtyard created inside the U-shape structure is the back of the house, a formal entrance, and having a terraced garden backdrop. The second of the Coxhead-designed houses on Panoramic Hill was built in 1905 for San Francisco fine-arts dealer Frederick Torrey at 1 Canyon Road. Also facing west with views, this brown shingled residence has dormer windows and a complicated footprint with numerous courtyards.

### Julia Morgan (1872-1957)

Julia Morgan was born in San Francisco in 1872 and raised across the bay in the then affluent suburb of Oakland. She enrolled in the University of California in 1890, where she was one of few women who majored in Civil Engineering. A lifelong friendship, mentorship, and professional partnership began during her junior year, when Morgan met and studied under the young and eccentric architect and professor, Bernard Maybeck. After graduating with honors in 1894, Morgan collaborated with Maybeck, who encouraged her to study at his *alma mater*, the École des Beaux-Arts. Six years later she returned to California, the first to earn a degree in

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architecture at the École des Beaux-Arts, and soon found work with John Galen Howard. In 1904 she set up her own business in the carriage house of her parents' home. By 1905, she had moved her practice to San Francisco, and from 1907 until her final retirement in 1951, Morgan located her practice in the Merchants Exchange Building in San Francisco. Apart from a short-lived partnership with Ira Hoover, she retained sole ownership of and authority over her architectural practice, which was one of the most prolific in the region. Though William Randolph Hearst's estate near San Simeon remains Morgan's most famous commission, she built her practice on the hundreds of houses and dozens of clubs, charities, schools, and other organizations of an extensive and influential women's network. Julia Morgan died in San Francisco in 1957.

On Panoramic Hill, Morgan designed three structures. One was an apartment building located at 5-11 Panoramic Way in 1912. This two story basement apartment building of stucco and half-timber was designed in a restrained Tudor mode. The symmetrical structure is U-shaped with a court yard in the back and gable roofs on the back wings. Windows dominate the front elevation so as to take full advantage of the panoramic views of the bay. In the front of the building is a common staircase and entryway for four apartments. Bay views are on the west elevation. The structure is subtle in design with the half-timbering being the predominant design element.

While still working with Ira Hoover in 1912, Morgan designed a brown shingle "apartment house" for Elsie Lee Turner, a childhood friend, at 66 Panoramic Way. In 1929, Morgan designed a single-family dwelling for Professor of Botany Willis Jepson at 11 Mosswood Road. A rectangular wood-frame stucco structure with tile roof, the Mediterranean style house is one room deep which brings light and the outdoors into each room.

### Walter Steilberg (1887-1974)

Walter Steilberg was born in Louisville, Kentucky, in 1887, and grew up in San Diego, California. During his high school years, Steilberg spent his summers working in the offices of Irving Gill, widely recognized as one of the most influential architects in modernism. Steilberg moved to Los Angeles after high school graduation and worked for Myron Hunt, most famous for such projects as the Rose Bowl in Pasadena, Caltech, Pomona, and Occidental College campuses, and the Pasadena Public Library. Steilberg studied architecture at the University of California, graduating in 1910 with a bachelor's degree in architecture and minor in structural engineering. Steilberg worked with Julia Morgan for ten years, before establishing his own office in 1920. He continued to acquire significant engineering work from Morgan, including that of the Berkeley City Women's Club, Pasadena YWCA, and work related to Hearst Castle. The devastating 1923 Berkeley fire, which scorched the hills to the north of the University campus and destroyed 400 buildings, inspired Steilberg to develop more fireproof construction materials. He patented a method of making reinforced concrete known as Fabricrete, which utilized thin stucco membranes to create a vertical air cavity.<sup>vii</sup> Steilberg was designing residential structures during the Great Depression. At the start of World War II, Steilberg was 54 years old and rather than

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enlisting he worked for a company in Seattle designing army bases. After the war, Steilberg served as structural engineer for the 1949 renovation work of UC Berkeley's Memorial Stadium. He died in 1974.

Steilberg's buildings on Panoramic Hill demonstrate his talent for designing domestic architecture, and there he would find a suitable location for two family homes among other structures. His first family home was located at 38 Panoramic Way, but ended tragically when both his first wife and daughter died from influenza. He was asked to design 1 Orchard Lane for Mrs. Mary V. Ferguson, who would become his mother-in-law, upon marrying Mrs. Ferguson's daughter Elizabeth. There he would raise his family and live for the remainder of his life. While 1 Orchard Lane was under construction he lived in the brown shingle cottage he designed at 1 Panoramic Way.

After the Berkeley hills fire of 1923, Steilberg's designs were intentionally as fireproof as possible: "I watched 400 buildings burn to the ground and decided to build a fireproof house."<sup>viii</sup> His design solutions were to develop the Fabricrete system while also utilizing metal window sashes, tile window sills, and floors of reinforced concrete. To demonstrate the feasibility of the Fabricrete system, Steilberg designed 101 Panoramic Way which is a two car garage at ground level and a two story house above. The reinforced concrete was used throughout and even for a vaulted ceiling in the living room. Steilberg used the same Fabricrete system to build five garage spaces on the ground level with a cottage above at 6 Mosswood Road. This would be rental property for the owner Charles Mel. The five garage openings were covered with muted colored, striped cotton curtains to soften the potential bluntness of the long five car garage. The Fabricrete cottage at 4 Mosswood Lane was built on Steilberg's family property that included 1 Orchard Lane and 1 Panoramic Way. It served as income property.

Steilberg was commissioned to design two other garage-apartment combinations (1 Canyon Road and 14 Mosswood Road) on Panoramic Hill both of which were built with reinforced concrete at ground level with brown shingle cottages on top.

Steilberg also was commissioned to design several houses on the hill, e.g. the brown shingle house for Marion Parsons at 29 Mosswood Road in 1921, the brown shingle house designed for Florence Atkinson in 1928 at 59/61 Panoramic Way, the brown shingle cottage for Lenore O'Connor at 45 Canyon Road in 1924, and the brown shingle residence at 65 Arden Road in 1935 for Alfred Parker.

### Walter H. Ratcliff, Jr. (1881-1973)

Walter H. Ratcliff, Jr. was born in London in 1881. The family immigrated to America in 1893, finally settling in Berkeley, California. Ratcliff attended the University of California, where he

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majored in chemistry and graduated with honors in 1903. During his undergraduate years Ratcliff developed an interest in architecture and designed his first speculative house in Berkeley in 1902. Over the next few years he designed and built a number of brown-shingle speculative houses in Oakland and Berkeley. In 1904, Ratcliff attended the British School in Rome. Two years later, he returned to Berkeley and worked in the offices of John Galen Howard. By 1908, he had started his own practice, first in San Francisco, then in Berkeley (where it is now the oldest East Bay firm), and continued to design both great and small, mostly English-influenced homes. In 1913, the city of Berkeley appointed Ratcliff City Architect, in which position he developed a reputation for both design and economy. Mills College, the women's college in Oakland, appointed him campus architect in 1923; the school's desire for buildings in the increasingly popular Spanish Colonial Revival style sent Ratcliff traveling to Mexico to sketch buildings of the early Spanish colonial period. From that point forward, he alternated regularly between English and Spanish styles. Walter Ratcliff died in Berkeley in 1973.

On Panoramic Hill, Ratcliff designed the brown shingle single-family structure at 37 Mosswood Road. Built in 1911 for Professor of Classics James Allen, the steeply pitched gable roof and the apparent five stories give height to this house built on the downhill side of the street. The presence of coastal live oaks and the abundance of large casement windows combine to give the experience of living in a large, albeit symmetrical and classical, tree house. Several front gables add lift to the house which is supported by a prominent battered foundation.

Robert T. Paine (1869-1946)

Robert Treat Paine was born in Indiana in 1870. A sculptor and technical innovator, he studied at the Chicago School of Art and also under Augustus Saint-Gaudens at the Art Students League in New York. While in New York, Paine invented a "pointing-up" device for mechanically tracing the outlines of a sculpture and reproducing them on a magnified scale, a process which had previously been done by hand. The first piece thus enlarged was the 1896 model for Saint-Gaudens' William Tecumseh Sherman Monument, a heroic-size bronze group standing at the 59th Street entrance of Central Park in New York City. After working in Italy, Paine moved to Berkeley in 1913 and in 1915 was commissioned to work on the upcoming 1915 Panama-Pacific Exposition in San Francisco. In this capacity he supervised the installation of sculptural embellishments to the Palace of Fine Arts and also created *The Illustrious Obscure*, a fountain on an island at the north end of the Palace of Fine Arts lagoon. Over three decades, Paine was commissioned to do numerous sculptures and sculptural embellishments by both private individuals and public institutions. His wife Mary Trueblood Paine taught mathematics at the Extension Division of the University of California. One of their two daughters, Evelyn Paine, married architect Robert Ratcliff and lived much of her childhood and all of her adult life in the Panoramic Hill neighborhood. Robert T. Paine died in 1946.

On Panoramic Hill in 1917, Paine designed his personal studio at 94 Panoramic Way although the building would serve primarily as his family residence. As a sculptor for numerous public

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installations, he was often living on-site and away from home. The house at 94 Panoramic Way has a handcrafted doorknocker, unusual exterior sheathing, e.g. tarpaper in combination horizontal board siding, and an unusual roofline that is nearly flat but slightly cambered. In response to slides caused by an underground spring at 74 Panoramic Way, Paine designed a fountain for the downhill property at 72 Panoramic Way.<sup>ix</sup>

### John Hudson Thomas (1878-1945)

John Hudson Thomas was born in Ward, Nevada in 1878 and grew up in the San Francisco Bay Area. After graduating from Yale University in 1902, he enrolled in the architecture program at the University of California and studied under the tutelage of John Galen Howard and Bernard Maybeck. Thomas worked for Howard for a short time, before entering into a partnership with George T. Plowman in 1906. During this period of his career he designed, with Plowman, a series of redwood bungalows which established his reputation. In 1910 he established his own practice. He continued to design wood houses when clients requested them, but he became deeply involved with exploring the visual possibilities of working in stucco. Thomas borrowed ideas from a range of sources and transformed and integrated them into very complex compositions. Among the most influential architects in Thomas's career were Adolf Loos, Otto Wagner, Charles Mackintosh, and Charles Voysey. A member of the Hillside Club, he mastered the archetypal Craftsman style advocated by Charles Keeler, but Thomas's early work also shows a whimsical exploration in Mission, Gothic, Tudor, Art Nouveau, English Cottage, and Viennese Secessionist styles. After 1915, however, Thomas designed more literal interpretations of historical styles, a notable feature of the second Bay Area Tradition. Thomas died in 1945.

John Hudson Thomas only designed one house on Panoramic Hill, and it was a remodel at that. However, his work in 1910 to remodel a farmhouse and the first house in the subdivision of University Hill, was important as an expression of Arts and Crafts period ideals in general and the early environmentalist owners', Edward and Marion Parsons', ideals in particular. The structure at 21 Mosswood Road was transformed from a white clapboard exterior to cladding in brown shingle. The downstairs interior was sheathed entirely in redwood. A modest entry was put on the street side with balconies and a more expansive window mass on the back and side which oriented toward the canyon and bay. The entry of the house was rotated 180 degrees, and one of the design challenges was surely to make what was the back side of the house a suitable entrance while the front of the house used every bit of space for windows, balconies, and interior seating areas with no access from this elevation.

### Robert W. Ratcliff (1913 - 1998)

Robert Ratcliff was born on May 6, 1913 in Berkeley, California, where he lived his entire life. In 1936, he graduated from the School of Architecture at the University of California at Berkeley. In

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1945, after serving in the Army, he joined the architectural firm of his father, Walter H. Ratcliff. With the Ratcliff firm Robert was responsible for the Mills College general plan and the design of nine buildings there. Much of his work centered around the University of California, not only at Berkeley but at Santa Cruz, San Francisco, San Diego, and Irvine. He was responsible for numerous restoration and renovation projects at the Berkeley campus in the early years of his career. As an architect for the City of Berkeley, he designed the controversial round firehouse on the Alameda, inspired by the triangular site and his desire to build around the mature trees located there. He designed the administration building for the Pacific School of Religion, the Alameda County Administration Building, several buildings at the Lawrence Berkeley National Laboratory, Kaiser Hospital, Fernwald Student Housing and Highland Hospital in Oakland. As someone who worked in the Second Bay Region Style, he was heavily influenced by the work of William Wurster and worked as an alumni advocate to change the curriculum of the UC School of Architecture towards Modernism and away from the Beaux-Art system of which his professors had been advocates. Ratcliff and his wife Evelyn, a landscape architect and the daughter of sculptor Robert Treat Paine, were devoted environmentalists and advocated for open creeks and for development inclined toward preserving and enhancing the natural features of a site. Their son Christopher Ratcliff is the third generation of architects to join the family business, Ratcliff Architects. Robert Ratcliff died in 1998.

Ratcliff designed numerous single-family dwellings on Panoramic Hill, but only two within the district boundaries. More importantly than the number he designed is that he chose the neighborhood as the location for his family home at 74 Panoramic Way. The house was built in stages, but the first stage was as early as 1941, at the beginning of World War II. The particular site he chose was a small niche of land within the precarious second hairpin turn on Panoramic Way and above ground of an underwater spring. He also designed the cottage next door at 72 Panoramic Way.

### William Wilson Wurster (1895-1973)

William Wurster was born in Stockton, California in 1895. He was trained in the classical Beaux-Arts tradition at the University of California. His San Francisco-based architectural firm Wurster, Bernard & Emmons was formed in 1945. He designed more than 200 homes, primarily in the 1930's, 1940's, and 1950's, which emphasized the relationship between indoors and outdoors, locating windows to intentionally capitalize on views, simplifying and reducing both interior and exterior detail, using indigenous materials, and exemplifying a sensitivity to site. Utilizing these relationships, one particularly influential residential building was the Gregory Farmhouse, which is a rustic, one-story ranch house in Scotts Valley, California. Wurster was responsible for creating the College of Environmental Design at UC Berkeley, which was interdisciplinary in its approach to design, and included Landscape, Planning, Architecture, and Design Arts. He became the College's dean. The building which houses the College of Environmental Design was named for Wurster and his wife Catherine Bauer Wurster, a notable planner, although he did not design the building as commonly thought. Wurster was designing houses during a period of national economic downturn. The characteristic lack of ostentation in his designs was

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especially attractive to wealthy Bay Area residents, who commissioned him to build homes from Lake Tahoe to Big Sur. His designs were warm in comparison to the austere International style of architects, such as Ludwig Mies van der Rohe and Le Corbusier and have been referred to as "soft modernism." Wurster won the prestigious Gold medal from the American Institute of Architects. He died in 1973.

On Panoramic Hill, Wurster designed a boxy garage and cottage combination at 70 Arden Road in 1939 for Miss Eleanor Gardner who lived next door at 76 Arden Road. Wurster also designed an extra dwelling unit to be incorporated into the lower floor of Miss Gardner's home at 76 Arden Road.

### Frank Lloyd Wright (1867-1959)

Frank Lloyd Wright was born in Richland Center, Wisconsin. From a young age, buildings fascinated Wright, but rather than architecture he studied civil engineering at the University of Wisconsin in Madison. After school, he moved to Chicago to work for the architectural firm of J. Lyman Silsbee and in 1887, was hired by the firm of Adler and Sullivan who were designing Chicago's Auditorium Building. Louis Sullivan was the young Wright's mentor and "Lieber Meister" (beloved master) and Wright eventually became the chief draftsman and head of the firm's residential design. It was not long before Wright began to develop his own architectural ideas—low, sheltering rooflines, the prominence of the central fireplace and "the destruction of the box" in favor of an open floor plan. Contrary to the firm's policies, Wright began "moonlighting", and was subsequently fired for the betrayal. He left, taking with him, Sullivan's considerable design influence. Wright began his own firm in 1893 and worked out of his now famous Home Studio in Oak Park, an affluent Chicago suburb. In the years between 1893 and 1901, Wright produced 49 buildings—primarily residential. This work is collectively known as the "prairie school". His personal life was dramatic and tragic and included abandonment of his first wife for a highly publicized liaison with Mamah Borthwick Cheney, the wife of a client. She was murdered by a servant, who also set their home on fire. It took Wright over 20 years to recover from these events, but even during the nadir of his career, he completed many important architectural projects including the Imperial Hotel in Tokyo and several concrete Californian residences. In 1932 Wright founded the Taliesin Fellowship. Thirty apprentices came to live and learn with Wright—bringing with them, a reliable stream of fees and sending out into the world--avid Wright disciples. The Fellows program was expanded to Arizona in 1936 and coincided with a rush of new commissions, including Fallingwater, his most famous building. During the war years, few buildings were produced, but under the G.I. bill, Taliesin built 270 houses—many in the simplified Usonian style. Wright also completed large important projects including Price Tower skyscraper, the Guggenheim Museum and the Marin County Civic Center. Frank Lloyd Wright defined "organic architecture" as architecture that is appropriate to time, appropriate to place, appropriate to man. These three concepts characterized his work throughout his long career. He died at the age of 92.

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On Panoramic Hill, Wright's designs found suitable expression at 13 Mosswood Road. The house was originally designed in 1939 for Lewis N. Bell in Malibu but was re-sited to the Berkeley location in 1974. The posthumous project was authorized by Olgivanna Wright and overseen by the Taliesen architects. The design, materials and foundation were reworked to suit the northern California character of the new site. The house is an excellent example of Wright's Usonian period and includes characteristic features, e.g. masonry rising directly out of the ground, a centralized kitchen, a carport instead of a garage, and a dining room folded into a corner of the living room and adjacent to the fireplace.<sup>x</sup>

### District History

#### Early Ownership and Planning

No roads led to plot number 80 in 1857 when Julius Kellersberger surveyed and platted the 16,970.68 acre ranch of Vincente and Domingo Peralta.<sup>xi</sup> By 1875, the location of plot 80 was identified as part of the "undivided mountain or hill land" of the Peraltas' ranch – the future Panoramic Hill neighborhood – at the very eastern limit of the land envisioned for development.<sup>xii</sup> Only dense black lines arranged in circular patterns signified the Coastal Range – evidently an impossible place to reach, let alone build. Kellersberger's map would foreshadow the slow and particular development of Panoramic Hill

By the time the College of California intended to relocate from downtown Oakland to the rural, unincorporated town of Berkeley to the north, the College had plenty of undeveloped land including, by then, plot number 80. To raise the money necessary to develop the college campus, the College of California turned to Isaac H. Brayton, as it had done in the past. A Congregationalist minister and large property owner, he owned the College of California buildings located in Oakland as he had loaned money to the College to save it from imminent bankruptcy in 1868. Since the new college planned to continue using the downtown Oakland buildings, for the time being at least, it offered to swap all of its land outside the boundaries of the future Berkeley campus for the mortgage on the buildings of the Oakland campus. The proposed land deal included Plot 80.

The land deal also included a small portion of what was known as the Berkeley Property Tract. As early as 1864 the College of California had acquired undeveloped land east and south of Strawberry Creek and had hired Frederick Law Olmsted to design a suitable residential neighborhood conducive to contemplation and refinement. The land deal included a part of the Berkeley Property Tract that remained undeveloped and outside of, although nearby, the area laid out by Olmsted.<sup>xiii</sup>

By the time the land deal was finalized, it was Isaac Brayton's widow, Mary, who signed on the dotted line making her the property owner of the future Panoramic Hill neighborhood.<sup>xiv</sup> Brayton



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did little to foster development on the hill, and upon her decease, her brother, sister, and in-laws inherited the land, and subsequently sold it in 1887 to real estate developer Charles Bailey.

The neighborhood began the following year in 1888 when Bailey subdivided University Terrace and cut a road "to meander...by the most feasible route according to the natural lay of the land..."<sup>xv</sup> The result is Panoramic Way, a narrow road with hairpin turns up the southern half of the hillside.

Also in 1888, Bailey sold one parcel of land to Silas M. Mouser, a San Francisco-based surgeon and physician, who first arrived in California in 1849. In 1895, he sold Mouser another parcel, who at some time between 1888 and 1895 built on the land a relatively modest farm house, planted almond orchards, and called his country retreat "Atalaya", the Spanish word for "watchtower." The local newspaper took note: "Dr. Mouser's house now being constructed on the hillside east of the town is visited by many who regard the situation as being extraordinary for the location of the dwelling. It will certainly open the eyes of many to the desirability of the hills as a handsome location for those who can afford to keep a horse and carriage and do not care for the frequent visits of their friends."<sup>xvi</sup>

By the time of his death in 1906, Bailey had divided his remaining land into parcels and sold all of it as part of University Terrace. Atalaya, meanwhile, remained intact until 1909. That year, just before his death, Silas Mouser deeded the farm to his son who, just one year later, sold it in its entirety to Warren Cheney, former editor of the literary magazine, *The Californian*, who turned to real estate development when his eyesight began to fail. Atalaya gave way to a new subdivision, University Hill,<sup>xvii</sup> which together with University Terrace would comprise the future Panoramic Hill neighborhood.

### Residential and Infrastructure Development for Diverse Intellectual Community

Even as the earthquake of 1906 sent thousands of San Franciscans fleeing across the bay to build new homes and new lives in Oakland and Berkeley and even as Francis Marion Smith and the Real Estate Syndicate opened extensive tracts of land and expanded the Key Route rail system to the outreaches of Oakland and north Berkeley, University Terrace and University Hill remained isolated. With no immediate access to public transportation, a single, narrowly winding access road, and steep, irregular lots that were difficult to build upon, prospective homeowners were a self-selecting lot. Situated above the lush flora, running creek and waterfalls of Strawberry Valley and the UC Botanical Gardens, commanding breathtaking views of the San Francisco Bay and beyond, and within walking distance of the University, the hill did ultimately attract nature lovers, artists, bohemians, and intellectuals who sought refuge from the deleterious effects of urban life and industrial development.<sup>xviii</sup>

In 1901 George Boke, who would eventually be Professor of Law in the School of Jurisprudence, hired Bernard Maybeck to design a rustic home with Swiss chalet features at 23 Panoramic Way in the University Terrace subdivision. A widow named Margaret Deane then

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hired Boke house builder A.H. Broad to build a shingled home with similar chalet features next door at 25 Panoramic Way. Over the next few years, development picked up pace, allowing J.R. Baird, a real estate developer and future resident of the hill, to report in 1906, "Hill property is demanding good prices and there is an unusual call for lots in the highest sections of Berkeley. We have disposed of several lots in the University Terrace during the past week and have several deals under negotiation."<sup>xix</sup>

By 1910, when Warren Cheney subdivided University Hill, seven more homes had been built along Panoramic Way and Canyon Road in the University Terrace area. Cheney saw promise for University Hill and quickly set about promoting its development. Though owned by the University, nearby Strawberry Valley enhanced the properties' appeal, a fact that was capitalized upon in Cheney's advertisements which noted that "the beautiful property will always be held as a public park."<sup>xx</sup>

Cheney forged two new roads from Panoramic Way into Atalaya, Dr. Mouser's former property, naming them Mosswood Road and Arden Road, and hired Henry Atkins, of Vickery, Atkins and Torrey, a prominent San Francisco fine arts firm, to design a pedestrian pathway connecting Panoramic Way to the new roads. The result was Orchard Lane, a concrete classical stairway, complete with urns, balustrades, and a graceful curve up the hillside. In keeping with the prevailing style of public architecture in the Bay Area at the time, Atkins chose the Beaux-Arts style.<sup>xxi</sup>

Being in walking distance of the University campus, the hill attracted numerous faculty including Charles Rieber, Professor of Logic and Rhetoric, who commissioned architect Ernest Coxhead to design his family home at 15 Canyon Road. Other early faculty residents included, but were not limited to, Albert Whitney, Professor of Mathematics, who built his home at 33 Canyon Road in 1907. Lincoln Hutchinson, Professor of Commerce, followed suit in 1908 with a home at 9 Canyon Road designed by Julia Morgan. George Stratton, first chair of the Department of Psychology, built his home at 67 Canyon Road (formerly 51 Canyon Road) in 1911. Also in 1911 James T. Allen, Professor of Classics, commissioned Walter Ratcliff to design his home at 37 Mosswood Road. Carleton Parker, Professor of Labor Economics, built at 38 Mosswood Road in 1915, and Ernest Hersam, Professor of Mining, built higher up on the hill at 100 Arden Road (formerly 47 Arden Road) also in 1915.<sup>xxii</sup>

Not surprisingly given its location near Strawberry Valley, and the vigorous climb to reach the hill, the neighborhood also attracted nature lovers and early leaders in the environmental movement. One such resident was Edward T. Parsons, a member of the Sierra Club, who aided John Muir in the fight to save Hetch-Hetchy Valley from being dammed. As he was also active in planning club trips and an accomplished writer, Parsons Memorial Lodge was built in his memory. His wife Marion Parsons shared Edward Parsons' enthusiasms, and after his death she continued to host Sierra Club meetings at their home at 21 Mosswood Road. They had transformed the once clapboard farmhouse into a craftsman gem through the capable

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design work of John Hudson Thomas. Marion Parsons served as director of the Sierra Club for over 20 years from 1914-1938.

Hill resident Lincoln Hutchinson, resident of 9 Canyon Road, co-founded the Sierra Ski Club in Norden when he was not on campus teaching. Other Sierra Club connections included member Clifton Price, who developed the Julia Morgan-designed apartment building (5-11 Panoramic Way), and Sierra Club charter member Willis Jepson, who was also Professor of Botany at the University and owner of the Julia Morgan designed residence at 11 Mosswood Road.

The label "nature lover" is apt for this generation of hill resident. Willis Jepson made his life's work the classification of native flora and developed the first complete index of California native plants. Moving on the hill in the mid- to late 1920s<sup>xxiii</sup>, on the original site of the Mouser farmhouse, and where there are now two residences (11 Mosswood Road and 13 Mosswood Road), he found a suitable environment for a personal research garden. Amelia Sanborn Allen, of 37 Mosswood Road, wife of Classics Professor James T. Allen, was a self-educated ornithologist who developed her avocation while residing in Strawberry Canyon<sup>xxiv</sup> and during vacations to the Sierras, Santa Cruz mountains, and Monterey<sup>xxv</sup>. Of her home in Strawberry Canyon, she wrote

"Our house is in the middle of a dense grove of young live-oak trees.... The house faces south and up the hill. To the west are three unimproved lots, one of woodland, the others partly open, with several rather large pine trees. To the north and east the oak forest is continuous, interspersed with bay trees; and there is a dense undergrowth of hazel, cascara, poison oak, spiraea, wild rose, snowberry, wild currant, blackberry and brakes, with thimble-berries and wild parsnip filling the cross ravines."<sup>xxvi</sup>

For others, nature was integral to their domestic lifestyle, such as Cornelia Stratton Parker's description of life at 38 Mosswood Road.

"There, around the redwood table in the living-room, by the window overlooking the Golden Gate, we had the suppers that meant much joy to us and I hope to the friends we gathered around us. There, on the porches overhanging the very Canyon itself we had our Sunday tea-parties."<sup>xxvii</sup>

The remote neighborhood also nurtured intellectual, sophisticated lifestyles, e.g. Ben Lehman, Professor of English, who from his Strawberry Canyon residence at 29 Mosswood Road, corresponded regularly with such famous writers as Sara Bard Field, Gertrude Atherton, John Steinbeck, and Thornton Wilder. Walter Steilberg, who first lived in 38 Panoramic Way then later at 1 Orchard Lane, hosted a panoply of guests including musicians Alfred Hertz, Ernest Block, Albert I. Elkus, Henry Cowell, and Ernst Bacon; writers Thornton Wilder, Leonard Bacon, Austin Wright, Sheldon Cheney, and Charles Keeler; photographers Ansel Adams, Imogen Cunningham, and Cedric Wright; artists Beniamino Bufano, Ralph Stackpole, Ray Boynton, Rudolph Schaefer, Joseph Page-Fredericks, and Robert Paine; fellow architects Eliel

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Saarienen, Richard Neutra, Harwell Harris, Warren Callister, Gardner Daily, Julia Morgan, Henry Gutterson, and William Corlett; psychologists Edward C. Tolman and James Stratton, all of whom are just some of the notable people who graced the halls of the Steilberg houses.<sup>xxviii</sup>

The neighborhood naturally attracted faculty because of its proximity to the University campus. But the neighborhood was also near Piedmont Way then the location of Berkeley's finest homes<sup>xxix</sup> and attracted connoisseurs of fine art as well as artists. For example, Frederic Torrey, who lived at 1 Canyon Road, was a principal in Vickery, Atkins and Torrey, a prominent San Francisco fine arts firm that helped to launch the careers of such notable artists as Imogen Cunningham and Maynard Dixon. Torrey apparently took pleasure in shocking the still rather conservative Berkeley art community by hanging Marcel Duchamp's *Nude Descending a Staircase* in prominent view in the entrance foyer of his home at 1 Canyon Road. He had bought the piece at the Armory Show in New York in 1913, which introduced to Americans Europe's most avant-garde artwork and subsequently changed the face of American artwork for the twentieth century.<sup>xxx</sup> Professor Rieber's wife, Winifred Smith Rieber, of 15 Canyon Road, was an esteemed portrait artist whose subjects would eventually include such notable figures as Albert Einstein, Thomas Mann, Phoebe Hearst, and Mrs. Herbert Hoover.<sup>xxxi</sup> Professor Carleton Parker and his wife Cornelia Stratton Parker enjoyed having guests to their home at 38 Mosswood Road; one such guest was artist Alexander Calder, who was then a student at Berkeley High School.<sup>xxxii</sup>

In the 1920 census records, there were a total of 34 households on the hill including a doctor, an accountant, a traveling salesman, five high school or grammar school teachers, one author, three artists, one art dealer, and nine professors. In general, the hill attracted a diverse and progressive crowd living outside mainstream commerce and industry.<sup>xxxiii</sup>

### Architectural Development

The first house to be built in University Terrace was the Boke House at 23 Panoramic Way. Built in 1901, this house has become one of Maybeck's most famous designs and exemplifies the basic tenets of vernacular architecture in the California Arts and Crafts movement. The same year, Boke House builder A.H Broad designed and built 25 Panoramic Way. Like the Boke House, the exterior was clad in brown shingles and the interior walls and ceiling covered in redwood. These were small brown shingle houses, and the dwelling next door at 27 Panoramic Way, built soon thereafter in 1903, was no exception.

At the same time as these single-family houses were being built at this remote hillside location, a more population dense three-unit apartment building was designed for 73, 75, & 77 Panoramic Way. The brown shingle dwelling was designed by the builder A.H. Broad and

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resembled a single-family dwelling from the outside. Inside, however, each apartment occupied a floor, and there were no connecting interior stairways in between. Balconies dominated the west elevation. Just uphill of the Boke House, a concrete pathway connected the apartment building to the Boke House and to Panoramic Way below.

Although small houses and apartment buildings were being built on Panoramic Way during the first decade of the 20<sup>th</sup> century, two large single-family houses were designed by Ernest Coxhead at 1 and 15 Canyon Road in 1906 and 1904, respectively. Although the houses on Panoramic Way had views of the bay and distant vistas, the houses on Canyon Road also had views of the nearby UC Botanical Gardens and Strawberry Creek. The emphasis on indoor-outdoor relationships was enhanced with window placement, window size, courtyards, and terraces. The large buildings blended in to their environments with brown shingled exteriors.

As demand for hill locations increased, another apartment building was built in the neighborhood in 1912. Designed by Julia Morgan, the four-unit stucco half-timbered apartment for Professor Price made no apologies for being an apartment building unlike the apartment building at 73, 75, and 77 Panoramic Way. However, it was subtle and restrained as many of Morgan's residential projects were inclined to be.

Before designing the Price Apartments, Morgan designed in 1908 a brown shingled house at 66 Panoramic Way. The dwelling was designed for her childhood friend Elsie Lee Turner, who used the dwelling for income property. A concrete staircase was shared with 64 Panoramic Way, which was also clad in brown shingles. For both buildings, the main entrances were to the side, faced each other, and oriented in a friendly arrangement toward the shared stairway.

Once the University Hill subdivision was developed in 1910, development moved further along Canyon Road and deeper into the canyon. Development moved from the western face of the hill to the northwestern face, which was along the new streets of Mosswood and Arden Roads. Also added was Orchard Lane, an arterial path that facilitated efficient travel, but also served as announcement of a more exceptional development. Formerly Dr. Mouser's almond orchard, the University Hill area also had plenty of fruit trees and an abundance of live oaks.<sup>xxxiv</sup>

In 1910, Edward T. Parsons bought Mouser's farmhouse and had it moved to its present location at 21 Mosswood Road, which allowed for a more prominent view of the canyon than its former location at Panoramic Way's second hairpin turn. John Hudson Thomas was hired to remodel the farmhouse. To enhance the canyon views, he found creative solution in transforming what was originally the back of the house to a street side front entrance so as to utilize the expansive windows in what was originally the front of the house.

Between 1911 and 1915, four professors would build houses in the most remote location possible within the University Hill subdivision. In 1911, Professor George Stratton built a house at the end of Canyon Road, and Professor James Allen built a house at the end of Mosswood Road. Both of these houses were next door to undeveloped University land. In 1915, Professor

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Parker built a house at 38 Mosswood, and Professor Hersam built a house at the cul-de-sac of Arden Road (now 100 Arden Road; then 47 Arden). In all these instances, rather than seeking fantastic panoramic views of the bay, they sought refuge at the end of the road, near the undeveloped University land next door, and oriented towards Strawberry Canyon. Although only one of them, 37 Mosswood Road, was designed by an architect, i.e. Walter Ratcliff, all were clad in brown shingles, had steeply pitched gable roofs, and interior walls and ceilings lined in redwood.

The Arts and Crafts movement continued to find expression on Panoramic Hill after World War I. Mabel Baird, who designed 14 and 16 Mosswood Road in 1919 and 1922, respectively, continued in the shingled mode. Even Walter Steilberg, who built an international reputation for his experiments in fireproof construction methods, designed 65 Arden Road in the old shingled manner in 1935.

The Bay Area's Arts and Crafts architecture included many styles, and the variations on the Arts and Crafts theme found expression on Panoramic Hill. A combination of factors influenced architects, builders, and home owners to seek alternatives to brown shingles. Rapid deforestation rendered wood increasingly scarce and expensive to build with, and the devastating Berkeley fire of 1923 made all too clear that the beloved wood houses posed serious fire hazards. In response to these and other factors, architects and home owners turned to Spanish Colonial Revival and Mediterranean styles of domestic architecture and built with concrete, tile, iron, and stucco instead of wood. These new styles still adhered to the basic tenets mentioned above, but also celebrated California's history and climate. In fact, with their flat roofs, thicker walls, and greater use of tile, they were more appropriate for the dry and temperate to warm climate than the often steeply pitched gabled roofs of earlier shingled houses.

The Steilberg compound at 1 Panoramic Way, 1 Orchard Lane, and 4 Mosswood Lane exemplifies the evolution of design away from brown shingle to other materials. Designed and constructed between 1922 and 1929, the property includes a classic shingled cottage (1 Panoramic Way), a half shingle/half-stucco main house (1 Orchard Lane), and a small Fabricrete cottage with a low pitched tile roof with flat terrace on top (4 Mosswood Lane).

Built in 1931, the Fabricrete house at 101 Panoramic Way is Mediterranean influenced while the stucco dwelling at 107 Panoramic Way, built in 1926, is more pueblo-style, but both retain Arts and Crafts features. The Julia Morgan-designed Spanish Colonial Revival stucco house and garage-cottage combination at 11 Mosswood Road likewise retain detail that define the period. The avian-themed hand-wrought iron gate at the front entrance as well as the fireplaces carved by Jules Suppo<sup>xxxv</sup>, who did much of the artisanal work at Hearst Castle, underscore this point particularly well.

In 1939, William Wurster designed a boxy wood siding and stucco house with four single stall garages below. By 1941, Robert Ratcliff had committed to building his family home in the niche

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of land created by the second hairpin turn on Panoramic Way in synchrony with the Walter Steilberg-designed house at the first hairpin turn on Panoramic Way built in 1928. Meanwhile, Frank Lloyd Wright would be designing a home for a Malibu residence in 1939 that would later be re-sited by Taliesin architects for the northern California location at Panoramic Hill and supervised during construction in 1974.

### Changes to the Area Adjacent to the District – California Memorial Stadium

Though the Hayward Fault runs through the first switchback at Panoramic Way and has always posed an imminent threat to the neighborhood, the biggest upheaval to the area was the construction of California Memorial Stadium in Strawberry Canyon, immediately to the north of Canyon Road. The new stadium was originally designed for the flatlands to the south of campus. But after much debate, and to the dismay of residents who had bought property and built their homes with Warren Cheney's promise of unspoiled nature forever surrounding them, the University finally decided to build on the Strawberry Canyon site, permanently and fundamentally changing the natural landscape as well as the residents' relationship to the University.<sup>xxxvi</sup>

Preparations for the construction of the new stadium immediately made apparent how dramatically it would alter the landscape that had shaped the development of Panoramic Hill for decades. Excavation of the 22-acre site began in January 1923. With 24,000 pounds of black powder and 10,000 pounds of dynamite, excavators loosened the ground. A combination of steam shovels, Caterpillar tractors, horse-drawn wagons, and hydraulic machines then removed the earth. Strawberry Creek was also diverted before construction began. By the end of November 1923, Panoramic Hill residents who once overlooked a botanical garden and an untamed bird and wildlife sanctuary now set their gaze upon "a double-decked steel and reinforced concrete structure with 60,000 seats, and underneath the seating decks were training quarters, convenience stations, reception room, handball and tennis courts, and other features. The outer walls were 91 feet high and ... bigger than the Coliseum in Rome."<sup>xxxvii</sup>

The University's decision to build at the Strawberry Canyon site launched a litany of complaints to the city; some of the most vocal of them came from residents of Panoramic Hill. Walter Steilberg, who had already designed and built two houses on the hill, and Walter Ratcliff who had designed one house on the hill, along with other prominent architects, e.g. John Galen Howard, Henry H. Gutterson, and William Corlett<sup>xxxviii</sup>, whose son would later build on the hill, voiced their concern over the suitability of the site—its seismic vulnerability (the Hayward fault runs through the middle of the site), potential traffic problems, excavating the land, and the destruction of the landscape. Most concerned residents cited the fire chief's assertion that building the stadium at the Strawberry Canyon site would create a dangerous fire hazard, which was the one legal argument that could be sustained. But implicit in many of the complaints was a concern over the destruction of the natural environment around which they had built their homes and lives. Berkeley residents had just witnessed the effects of campus expansion at Bancroft Way, the street running along the southern perimeter of the University campus. The

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destruction of trees and demolition of homes with street widening presaged similar devastation during stadium construction. Other Panoramic Hill residents, like Theological Seminary Professor John Buckham at 36 Panoramic Way, made generic references to spoiling the beauty of the city. Still other residents fled. Harold Sawyer, who had recently purchased property on the hill with the intention to build, assured the city that he would not do so if the stadium were built in Strawberry Canyon. A man of his word, Sawyer and his family moved to Oakland instead. Professor of Logic Charles Rieber, who along with his wife the esteemed portrait artist Winifred Smith Rieber, fought a very public battle to conserve the beauty of the area which was adjacent to their home at 15 Canyon Road. In an embarrassing move for the Berkeley campus, the family relocated to southern California, where Rieber became the first Dean of the College of Arts and Sciences at the University of California, Los Angeles, and where ultimately a building was named in his honor.<sup>xxxix</sup>

### Neighborhood Development After the Stadium

Despite substantially changing the neighborhood environs, development on the hill continued after the stadium was built. Walter Steilberg had already put in the foundation for 1 Orchard Lane "when the stadium frenzy broke loose."<sup>xl</sup> He had designed a dining room plate glass window to look into the Botanical Gardens from one direction and San Francisco from the other. But the construction of a sorority house across the street on the other side of Panoramic Way in combination with stadium construction rendered these design details pointless. Despite these changes, Walter Steilberg continued to live on the hill, raise his family, and find other inspiration in the neighborhood. Later, in 1941, Robert Ratcliff would begin building his family home on Panoramic Hill at 74 Panoramic Way. He had already designed a small cottage at 72 Panoramic Way, for his mother-in-law, and his father-in-law Robert Paine had already designed a house at 94 Panoramic Way.

Garages would proliferate as many early houses on the hill were built without garages. For example, in 1939 Miss Eleanor Gardner who lived in 76 Arden Road commissioned her friend William Wurster to design a four car garage with apartment above.<sup>xli</sup>

Proximity to the campus and student housing shortages during the 1960's created demand for housing on Panoramic Hill as elsewhere in the City. In 1963, architect Howard Moise was granted a use permit to use 9 Canyon Road for a two-family dwelling.<sup>xlii</sup> One of the small cottages in the condominium association on Canyon Road was subdivided further and was allowed by the City of Berkeley to become a two family dwelling.<sup>xliii</sup> Professor Rieber's former residence at 15 Canyon was sub-divided into three dwelling units. In the 1960's, Professor Buckham's former residence at 36 Panoramic Way received a use permit to operate a boarding house.<sup>xliiv</sup>

Development intensified further when on July 20, 1967, the City of Berkeley adopted Ordinance No .4273 which allowed two dwelling units to be built on one lot. But within 10 years,



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homeowners had organized and led the effort to down-zone the neighborhood into the most restrictive single-family zone in Berkeley. Known as the Environmental Safety-Residential zone, and in recognition of substandard infrastructure and extreme fire hazards, it effectively halted the rapid proliferation of more intensive development unsuitable for the neighborhood.

### Panoramic Hill Subdivisions and Boundaries

The Panoramic Hill Historic District occupies portions of three early subdivisions. These are the Berkeley Property Tract, University Terrace, and University Hill. The first of these was the Berkeley Property Tract, from which parts were resubdivided, one part of which was University Terrace. University Hill was subdivided from Dr. Mouser's farm known as Atalaya.

The relationship between University Terrace and University Hill is like two irregular pieces of a jigsaw puzzle that together make a whole. What is, or is not, in one subdivision or the other is virtually irrelevant to its sense of place.

The unifying element is Panoramic Way by which every motorized traveler must use to enter and leave the neighborhood. So, for example, residential areas not accessed by Panoramic Way, such as Hillside Court on the southwestern façade of Panoramic Hill, are not included in the Panoramic Hill district. The district is defined therefore by common access and not by geography, topography, or even proximity.

The proposed district occupies portions, but not all, of both University Terrace and University Hill. At some point during the hill's development, the two subdivisions accessed by Panoramic Way became known as Panoramic Hill. No subdivision was ever developed by that name, but Panoramic Hill nevertheless became the colloquial identifier. The name of the Mouser's farm, Atalaya, never stuck although it was at one time Warren Cheney's choice for what would become Arden Road. University Terrace and University Hill did not last and without subdivision maps there would hardly be a record of their usage. Instead it was Panoramic Hill that would evolve as a most accurate name since the neighborhood was blessed by panoramic views and one narrow, meandering, impossible, but quaint road by the same name. It is the Panoramic Hill Historic District that holds this history.

### EVALUATION

The Panoramic Hill Historic District is eligible for the National Register of Historic Places under criterion C at the local level of significance. Under criterion C, Panoramic Hill is significant in the area of Architecture as a neighborhood that represents the Bay Area Tradition in architecture, primarily the first phase associated with the Arts and Crafts movement. The district includes notable houses by architects Ernest Coxhead, Bernard Maybeck, Julia Morgan, Walter

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Steilberg, and others; a distinctive street plan; and paths and steps that provide pedestrian circulation. Since the north side fire of 1923, Panoramic Hill is among the most extensive surviving Arts and Crafts neighborhoods in Berkeley, which was a center of this important early twentieth century architectural movement. The district is significant for the period from 1901, when the first building was constructed, to 1950.

### Integrity

#### Location

The Panoramic Hill Historic District retains integrity of location. It remains today where it was built. One house, Dr. Mouser's farmhouse of 1888, was moved within the district to 21 Mosswood Road in 1910. This change occurred within the period of significance and is part of the history of the district.

#### Design

The Panoramic Hill Historic District retains integrity of design. The principal changes to the district since the end of the period of significance are the construction of 11 new houses and the alteration of many houses for multi-tenant use. The new houses are compatible in scale and materials; although not contributors, they maintain the pattern of development of single family houses and garages that characterizes the design of the district. The alteration of houses for multi-tenant use is generally not accompanied by major exterior alterations. However, multi-tenant use is often associated with lower maintenance than exists for single-unit residences.

#### Setting

At a grand scale, the setting of the district is little changed. The major aspects of setting – its isolation on a hill with canyons to the north and south and a panoramic view to the west, are unchanged.

The principal changes in the immediate setting are the development of apartment buildings adjacent to the district on its west side and the expansion of the neighborhood up the hill to the east. The apartment buildings present an incompatible edge to the district. The expanded neighborhood to the east, much of it representing the second and third phases of the Bay Area Tradition, is newer than the area within the district but is generally not incompatible with it. It is possible that parts of this expanded neighborhood could be added to this district in the future when sufficient perspective exists to evaluate it.

#### Materials

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Integrity of materials in the district remains high. The full range of materials, including the dominant redwood, remains present, as do other materials – stucco, tile, iron, concrete, and brick. The use of materials is one of the hallmarks of the Arts and Crafts movement, and the original materials are largely intact.

### Workmanship

Integrity of workmanship, like integrity of materials, is high. Likewise, workmanship is a hallmark of Arts and Crafts architecture. Workmanship is a characteristic that is more evident up close, to private visitors, than from public streets and pathways.

### Feeling

Integrity of feeling is diminished – in generally superficial and ephemeral ways – notably the parking of cars along the roads, and minor exterior modifications for multi-tenant use.

### Association

Integrity of association is high. Because the original houses and other buildings and structures of the district are intact, the association with the history of the district is present.

<sup>i</sup> Richard Longstreth, *On the Edge of the World: Four Architects in San Francisco at the Turn of the Century* (Berkeley, 1983), pp. 112-113.

<sup>ii</sup> Sally Woodbridge, *Bay Area Houses*, New Edition (Salt Lake City: Gibbs Smith Publisher, 1988), pp. 8-22.

<sup>iii</sup> Kenneth H. Cardwell, *Bernard Maybeck: Artisan, Architect, Artist* (Santa Barbara: Peregrine Smith, Inc., 1977).

<sup>iv</sup> Berkeley Urban Conservation Survey, Folder 1861, BAHA; Cardwell, *Bernard Maybeck*, pp. 74-77.

<sup>v</sup> Interview of John Arthur by Janice Thomas on 10/26/04. Mr. Arthur is author of two books on Bernard Maybeck to be published in the spring 2005 by Gibbs Smith Publisher.

<sup>vi</sup> Ernest Coxhead Collection, 1919-1932 Finding Aid, College of Environmental Design Archives, University of California, Berkeley; <http://findaid.oac.cdlib.org/findaid/ark:/13030/tf087001g5/bioghist/112931656>.

<sup>vii</sup> John Beach, *Berkeley Gazette*, December 19, 1974.

<sup>viii</sup> Ibid.

<sup>ix</sup> Suzanne B. Riess, editor, *The Julia Morgan Architectural History Project* Vol. 1 (Berkeley: The Regents of the University of California, 1976), p. 103.

<sup>x</sup> Interview of Jeanne Allen by Janice Thomas on 10/30/04.

<sup>xi</sup> Julius Kellersberger, *Map of the Ranchos of Vincente and Domingo Peralta*, January 21, 1857, Alameda County Office of the Recorder, Book 17, p. 12.

<sup>xii</sup> *Map of the Undivided Mountain or Hill Land of the Vicente and Domino Peralta Rancho*, March 2, 1875.

<sup>xiii</sup> Berkeley Architectural Heritage Association, *Frederick Law Olmsted's Berkeley Legacy – Piedmont Way and The Berkeley Property Tract* (Berkeley: 1995), p. 1-5.

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<sup>xiv</sup> Ibid.; *Official and Historical Atlas Map of Alameda County, California* (Oakland: Thompson & West, 1878), pp. 112-13; Verne Stadtman, *The University of California: 1868-1968*, p. 40.

<sup>xv</sup> *Alameda County Book of Deeds 350/77*.

<sup>xvi</sup> *Berkeley Herald*, November 5, 1888.

<sup>xvii</sup> Frank Soulé, Jr., *Map of Strawberry Valley and Vicinity Showing the Natural Resources of the Water Supply of the University of California with Proposed System of Reservoirs, Distributing Pipes, etc.* (Lith. Britton Rey & Co.: San Francisco, 175); Survey map of University Terrace, 1888, BAHA; *Alameda County Book of Deeds* 325/159-163, 330/43, 50/75-78, 559/355-56, 1637/446-48, 1754/186-189.

<sup>xviii</sup> Kellersberger; Alameda County Office of the Recorder, Book 17, p. 12; for a history of the Key Route system and Realty Syndicate, see George Hildebrand, *Borax Pioneer: Francis Marion Smith* (San Diego: Horwell-North Books, 1982).

<sup>xix</sup> "Realty Men Report many Sales and an Advance in Prices," in Richard Schwartz, *Berkeley 1900: Daily Life at the Turn of the Century* (RSB Books, 2000), p. 183.

<sup>xx</sup> "University Hill," advertisement in *Berkeley Gazette*, August 16, 1910; "More about University Hill," advertisement in *Berkeley Gazette*, August 17, 1910, p. 8.

<sup>xxi</sup> The Bay Area boasts some of the greatest concentration of Beaux-Arts architecture in the United States. Phoebe Hearst, widow of mining tycoon and United States Senator George Hearst and mother of politician and media mogul, William Randolph Hearst, for example, underwrote an international competition in 1898 to find an architect who could design a new University of California campus worthy of international prestige; virtually all the applicants, including the architect of the winning design, studied for some period at the Ecole des Beaux-Arts. San Francisco also took advantage of its ruined state following the 1906 earthquake to construct a city hall and civic center in the Beaux-Arts style as well. John Bakewell and Arthur Brown, Jr., both Beaux-Arts graduates and contemporaries of Julia Morgan, designed and implemented the complex as it stands today. See Gray Brechin, *Imperial San Francisco: Imperial San Francisco: Urban Power, Earthly Ruin* (Berkeley, 1999); Richard Longstreth, *On the Edge of the World: Four Architects in San Francisco at the Turn of the Century* (Berkeley, 1983); Roy Lowe, "A Western Acropolis of Learning": *The University of California in 1897* (Berkeley, 1996).

<sup>xxii</sup> Anthony Bruce, et al., *Panoramic Hill: Berkeley's Most Romantic Neighborhood*, revised edition (Berkeley: Berkeley Architectural Heritage Association, 1996).

<sup>xxiii</sup> Jepson may have lived in the garage apartment, which was built before the house was completed in 1929. However, available records are unclear on this point.

<sup>xxiv</sup> Amelia Sanborn Allen, "Birds of the Berkeley Hillside," in *The Condor* Vol. XVII (March 1915), p. 78.

<sup>xxv</sup> Amelia Sanborn Allen, *Chasing Wrens* (Berkeley: Gillick Press, 1945).

<sup>xxvi</sup> Ibid, p. 78.

<sup>xxvii</sup> Cornelia Stratton Parker, *An American Idyll: The Life of Carleton H. Parker* (Boston, 1919): pp. 90-91.

<sup>xxviii</sup> Berkeley Urban Conservation Survey, Folder 1862, BAHA.

<sup>xxix</sup> Lesley Emmington Jones, *Frederick Law Olmsted's Berkeley Legacy - Piedmont Way and The Berkeley Property Tract* (Berkeley: Berkeley Architectural Heritage Association, 1995).

<sup>xxx</sup> Ibid.

<sup>xxxi</sup> City of Berkeley Landmark, June 7, 1999.

<sup>xxxii</sup> Interview of Mrs. Cornelia Stratton Parker by J.R.K. Kantor, University Archivist and Panoramic Hill resident who lived in 38 Mosswood Road from 95-1957 and interviewed Mrs. Parker during the period of 1962 until her death some years later.

<sup>xxxiii</sup> 1920 United States Federal Census, Alameda County, City of Berkeley, California, Enumeration District 174.

<sup>xxxiv</sup> Allen, p. 78; Early undated photograph of "Berkeley Highlands - Side Hill Homes" (Berkeley Architectural Heritage Association, Archives).

<sup>xxxv</sup> Interview of Frances Fischer, current owner of 11 Mosswood Road by Karen McNeill, June 28, 2004.

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<sup>xxxvi</sup> Siegel and Strain, Architects, "Historic Structure Report: University of California, Berkeley, California Memorial Stadium," prepared for the University of California Office of Planning, Design, and Construction, September 23, 1999, pp. 16-23.

<sup>xxxvii</sup> *Ibid.*, pp. 21-32.

<sup>xxxviii</sup> Susan Cerny, "Berkeley Observed; Memorial Stadium – controversial from the start", *Berkeley Daily Planet*, September 2, 9, 12 of 2003.

<sup>xxxix</sup> City of Berkeley Landmark, June 7, 1999.

<sup>xl</sup> Riess, p. 106.

<sup>xli</sup> Interview of Robert Breecker, current owner of 76 Arden Road, by Janice Thomas, 10/15/04.

<sup>xlii</sup> City of Berkeley Use Permit #5089, 1/2/63.

<sup>xliii</sup> City of Berkeley Use Permit #5021, 7/3/73.

<sup>xliiv</sup> City of Berkeley Use Permit #132.

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United States Department of the Interior  
National Park Service

National Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 9 Page 3

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United States Department of the Interior  
National Park Service

# National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 10 Page 1

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**VERBAL BOUNDARY DESCRIPTION**

See Sketch Map.

AUG 11 2005

**BOUNDARY JUSTIFICATION**

Panoramic Hill is geographically distinguished by Strawberry Canyon to the north and Hamilton Gulch to the south. The hill's borders are naturally articulated. Situated in the East Bay Hills, the hillside's predominant orientation is west.

The lower elevations of the hillside neighborhood have a concentration of houses, garages, and landscape features that fit all of the criteria of the proposed historic district. Although a few structures built at higher elevations would meet all of the criteria, they lie within an area that was largely developed after the historical period in question.

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Section number \_\_\_\_ Page

**Panoramic Hill Historic District  
Photographic Directory:**

**5 x 7 - Black and White Fiber-Reprints**

The information in 3, 4, 5 below applies to all 5 x 7 - black and white fiber reprints:

3. Photographer: Fredrica Drotos
4. Date of Photograph(s): 2004
5. Location of Original Negative(s): 16 Mosswood Road, Berkeley, California

Key: R indicates the photograph is a fiber reprint

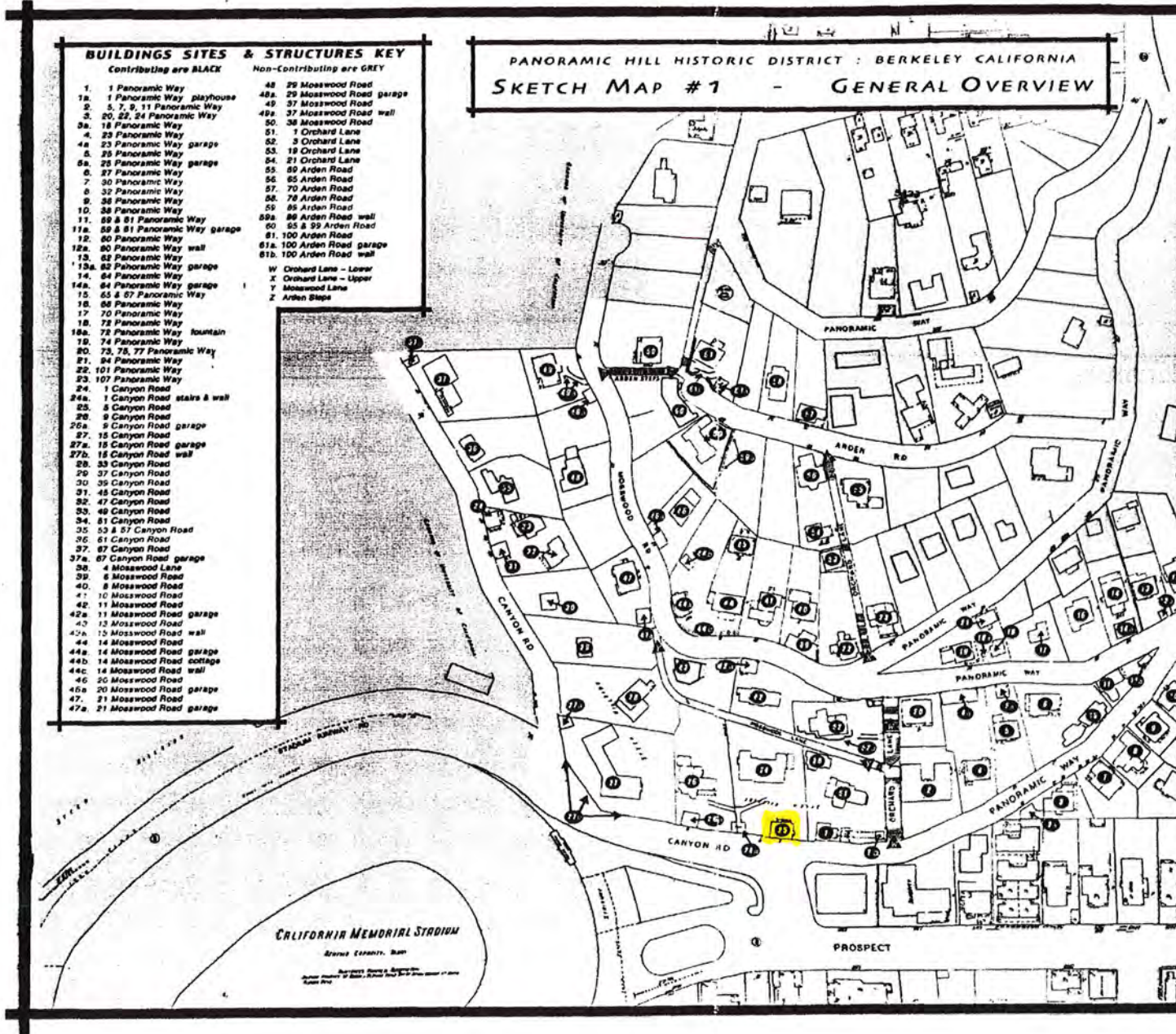
Direction of Camera:

|             |           |
|-------------|-----------|
| 4.1. (R)    | East      |
| 11.1. (R)   | Northeast |
| 11.2. (R)   | North     |
| 23.3. (R)   | Southwest |
| 27.1. (R)   | Southeast |
| 31.1. (R)   | Southeast |
| 39.2. (R)   | South     |
| 42.1. (R)   | Northwest |
| 49.1. (R)   | Northeast |
| 61.a.1. (R) | North     |
| z.1. (R)    | South     |
| v.2.(R)     | Northwest |
| v.3.(R)     | West      |
| v.6. (R)    | Northwest |
| v.7. (R)    | South     |

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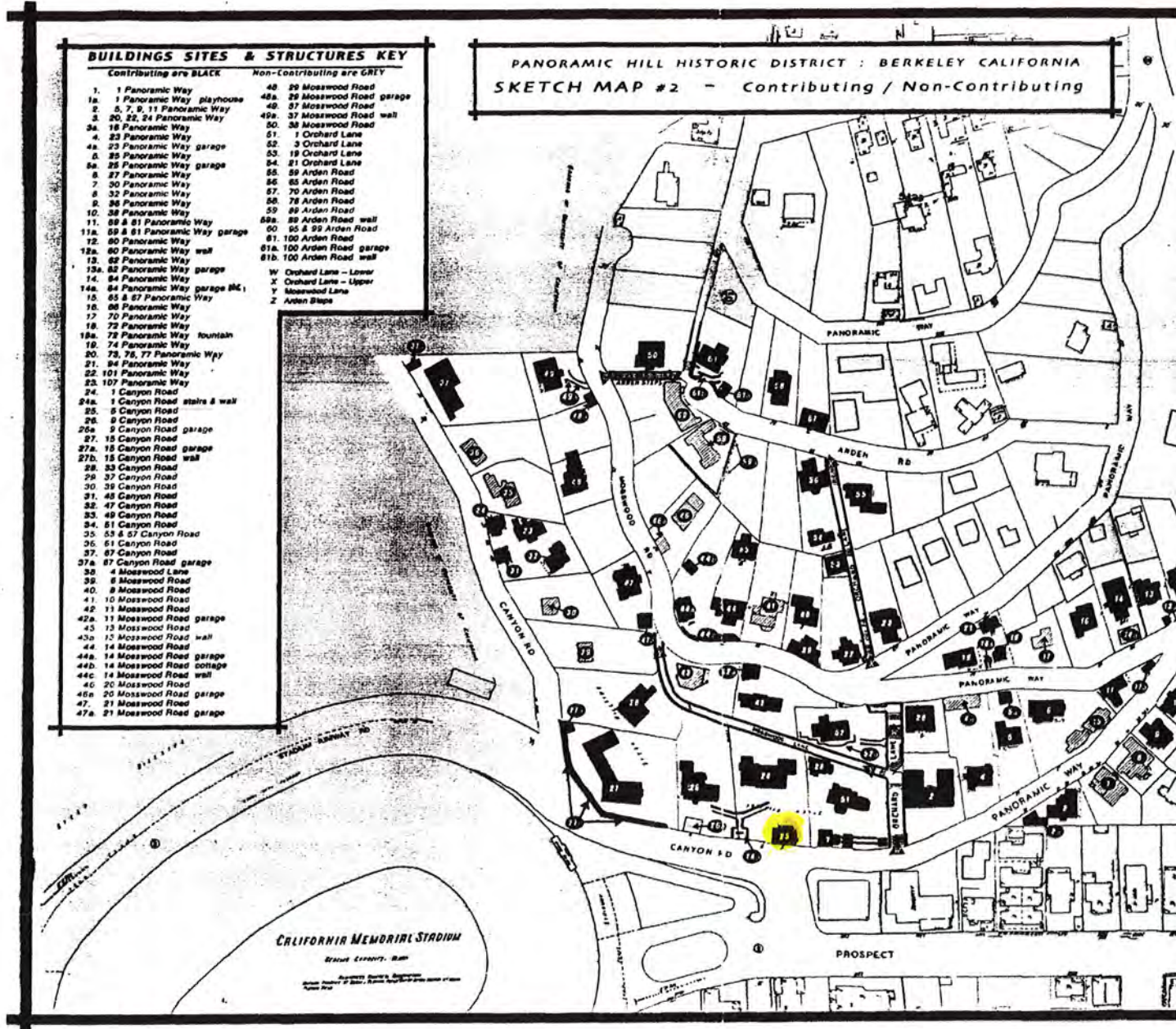
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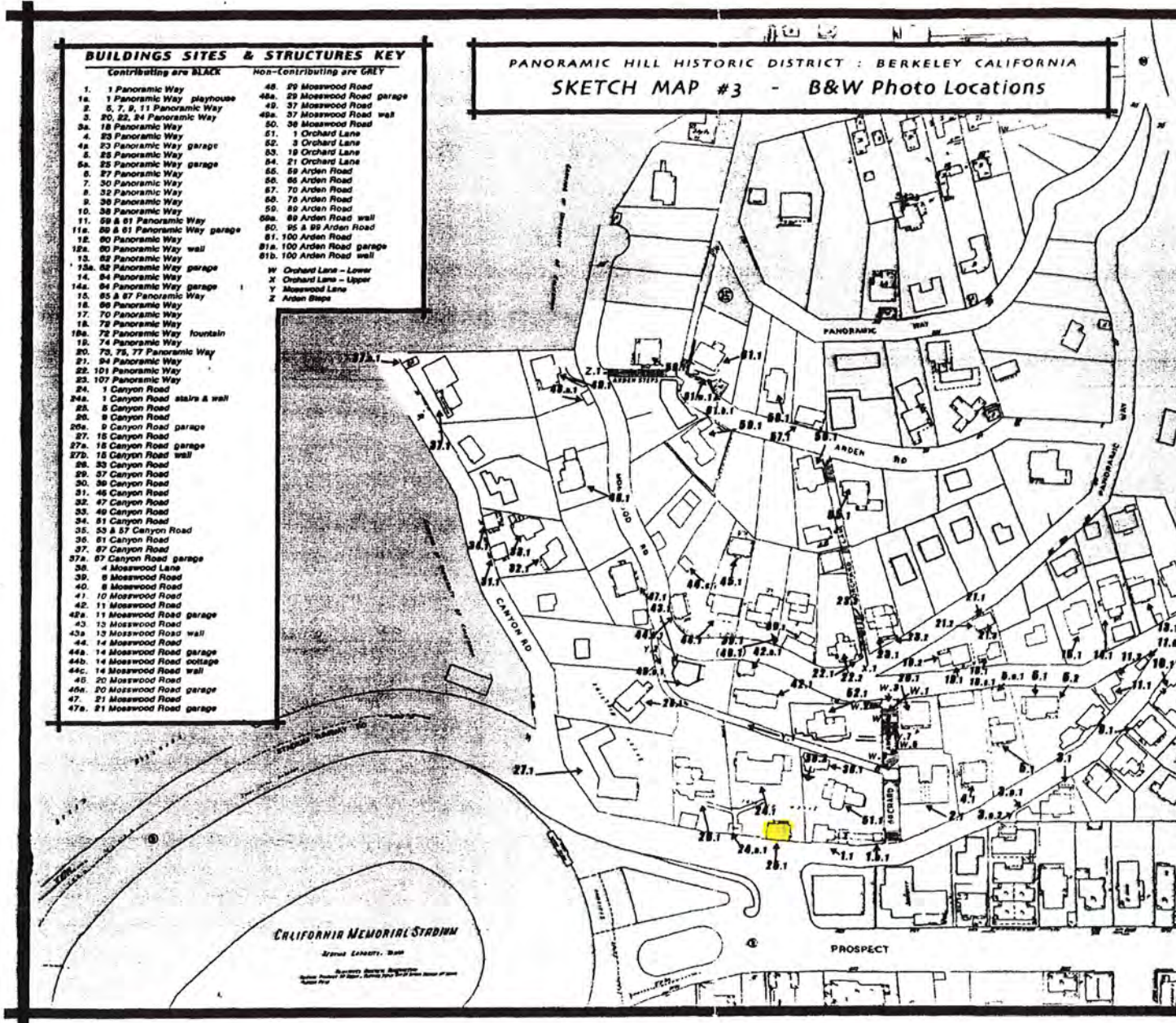
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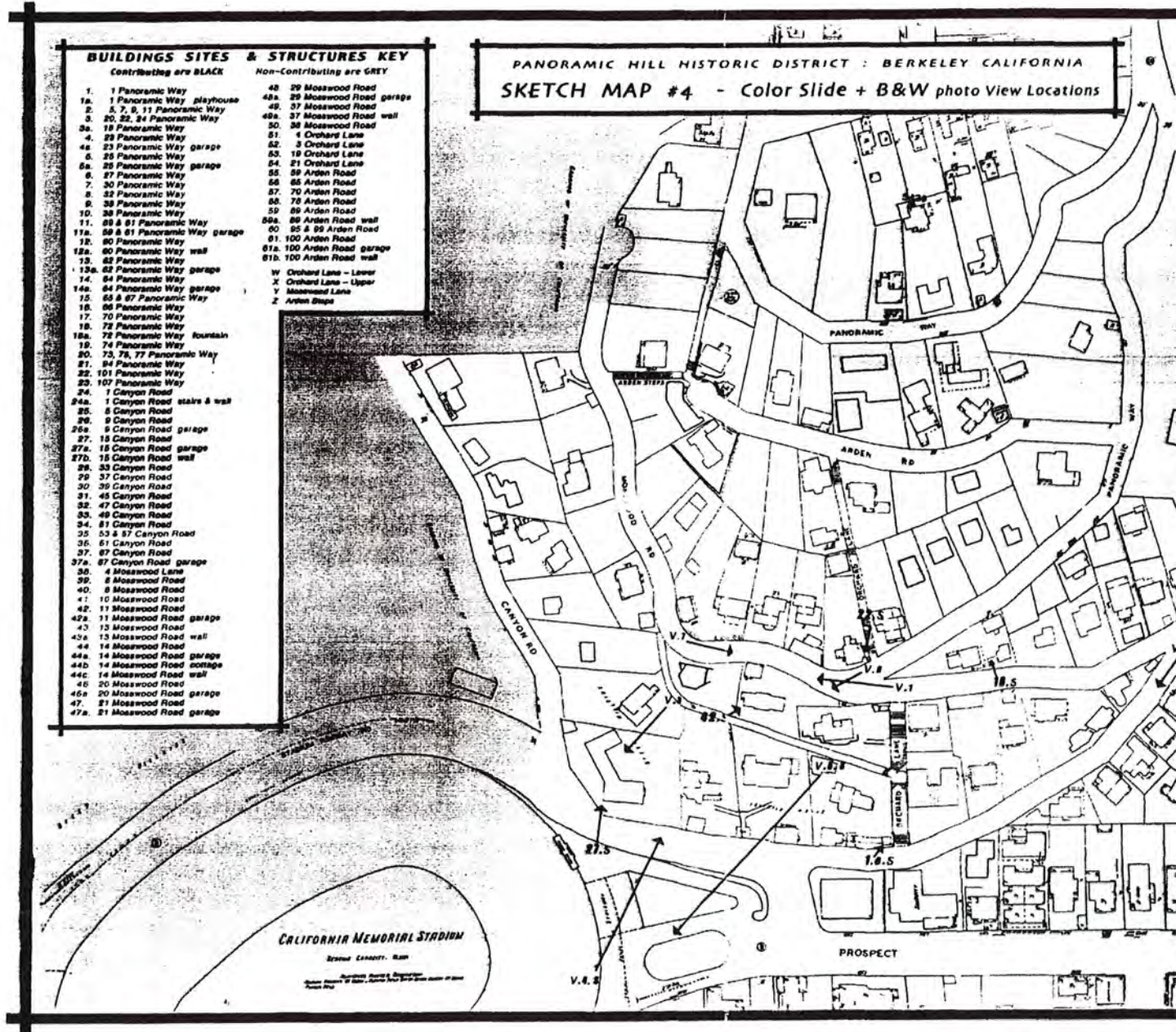
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LAND USE PLANNING





Office of the City Manager

## INFORMATION CALENDAR

January 22, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Timothy Burroughs, Director, Planning and Development  
 Subject: LPC NOD: 2415 Blake Street, #LMIN 2018-0004

### INTRODUCTION

The attached Notice of Decision for the designation of a City Landmark is submitted to the Mayor and City Council pursuant to Berkeley Municipal Code (BMC) Section 3.24.160, which states that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

### CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has granted City Landmark status to the property at 2415 Blake Street. This action is subject to a 15-day appeal period, which began on January 7, 2019.

### BACKGROUND

BMC/LPO Section 3.24.190 allows City Council to review any action of the Landmarks Preservation Commission in granting or denying Landmark, Structure of Merit or Historic District status. In order for Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, a Council member must move this Information Item to Action and then move to set the matter for hearing on its own. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by January 22, 2019. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set. The Council must rule on the application within 30 days of closing the hearing, otherwise the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to appeal the decision, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this action.

CONTACT PERSON

Fatema Crane, Landmarks Preservation Commission Secretary, Planning and Development, 510-981-7410

Attachments:

1: Notice of Decision – #LMIN 2018-0004 for 2415 Blake Street





L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

---

N O T I C E O F D E C I S I O N

**DATE OF COMMISSION DECISION: December 6, 2018**  
**DATE NOTICE MAILED: January 7, 2019**  
**APPEAL PERIOD EXPIRATION: January 22, 2019**  
**EFFECTIVE DATE OF DECISION (Barring Appeal or Certification): January 23, 2019<sup>1</sup>**

## 2415 Blake Street

### Landmark application #LMIN2018-0004 for City Landmark or Structure of Merit designation status for a residential property in the Southside

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following designation:

**DESIGNATION:** City Landmark

**APPLICANT:** Paul E. Matzner, 2415 Blake Street, Berkeley CA 94704

**ZONING DISTRICT:** R-2A, Restricted Multiple-Family Residential

**ENVIRONMENTAL REVIEW STATUS:** Exempt pursuant to CEQA Guidelines Section 15061.(3)

**The application materials for this project are available online at:**  
<http://www.cityofberkeley.info/zoningapplications>

---

### FINDINGS AND APPROVED APPLICATION ARE ATTACHED TO THIS NOTICE

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<sup>1</sup> Pursuant to BMC Section 1.04.070, if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day. Pursuant to BMC Section 3.24.190, the City Council may “certify” any decision of the LPC for review, within fifteen days from the mailing of the NOD. Such certification shall stay all proceedings in the same manner as the filing of a notice of appeal.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
LMIN2018-0004  
2415 Blake Street  
January 7, 2019  
Page 2 of 4

---

**COMMISSION VOTE: 6-0-1-1 (one vacancy)**

**YES:** ABRANCHES DA SILVA, ADAMS, ALLEN, CRANDALL, O'MALLEY, OWENS

**NO:** None

**ABSTAIN:** FINACOM

**ABSENT:** BEIL

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):**

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley; or by facsimile to (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.
2. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
3. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
  - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - c. The fee for all appeals by Applicants is \$2500.

If no appeal is received, the landmark designation will be final on the first business day following expiration of the appeal period.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
LMIN2018-0004  
2415 Blake Street  
January 7, 2019  
Page 3 of 4

correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.

2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
LMIN2018-0004  
2415 Blake Street  
January 7, 2019  
Page 4 of 4

**PUBLIC COMMENT:**

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

Questions about the project should be directed to the project planner, Fatema Crane, at (510) 981-7410 or [fcrane@cityofberkeley.info](mailto:fcrane@cityofberkeley.info). All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 2120 Milvia Street, between 8 a.m. and 4 p.m., Monday through Friday.

**ATTACHMENTS:**

1. Findings
2. Landmark Application, received **SEPTEMBER 26, 2018**

ATTEST:   
Fatema Crane, Secretary  
Landmarks Preservation Commission

cc: Applicant/Owner  
Residents  
City Clerk

Applicant & Property Owner:  
Paul E. Matzner  
2415 Blake Street  
Berkeley, CA 94704

## DRAFT FINDINGS

DECEMBER 6, 2018

## 2415 Blake Street

### City of Berkeley Landmark Application LMIN2018-0004

#### PROJECT DESCRIPTION

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Landmark Designation of the property at 2415 Blake Street - the George Wilson House and the Herbert Bofinger Cottage

#### CEQA FINDINGS

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1. The project is found to be exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15061.b.3 of the CEQA Guidelines (activities that can be seen with certainty to have no significant effect on the environment).

#### LANDMARK PRESERVATION ORDINANCE FINDINGS

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2. Pursuant to Berkeley Municipal Code (BMC) Section 3.24.110.A Paragraph 1.b of the Landmarks Preservation Ordinance, and based on the evidence presented in the Landmark application, the Landmarks Preservation Commission of the City of Berkeley (Commission) finds that the subject buildings exhibit architectural merit as outstanding examples of Italianate architecture, in the case of the George Wilson House constructed between 1885 and 1886, and of vernacular architecture reflective of the Third Bay Tradition, in the case of the Herbert Bofinger Cottage constructed in 1979 by an informal architectural designer and professional draftsman for his personal use. Some of the identifiable features of the Italianate style evident in the Wilson House include: box-shaped building; simple, low-pitched hipped roof; overhanging eaves with decorative brackets beneath, set within prominent trim detail; tall and narrow hooded windows with bracketed, pedimented crowns; windows, cornices and doorway/porch serving as principle areas of elaboration. Identifiable characteristics of the Third Bay Tradition found in the informal architectural design of the Bofinger Cottage include: vertical orientation, geometric building form; wood shingle siding, wood and natural exterior materials and trim, and an overall simplicity of design. These buildings represent outstanding examples of architecture because of the combination of these evident features with the integrity that each building exhibits.
3. Pursuant to BMC Section 3.24.110.A, Paragraph 4, the Commission finds that the subject property exhibits direct associations with the earliest development and transformation of Berkeley from an agricultural economy to a suburban residential community through its retention of the extant 1885-86 Italianate residence, the Wilson House. This residence was constructed shortly after the Berkeley establishment as a city (in 1878) and the initial 1875 Leonard tract map subdivision of the area.

## FEATURES TO BE PRESERVED

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1. This designation shall apply to the subject property and the following distinguishing features shall be preserved:

### The George Wilson House

- All distinctive, existing exterior building features of the Italianate architectural style
- Rectangular massing with symmetrical front façade
- Low-pitched hip roof featuring decorative brackets within the eave overhangs
- Paneled frieze trim at wall plates
- Front entry cornice and sidepieces and paneled door
- Two pairs of tall, narrow windows within front façade including ornate trim surrounding and within, cornices above, and (vertically oriented) two-pane glazing within wood sashes
- Narrow windows on the west and east facades and all trim thereto
- Window (kitchen) on north façade with trim thereto

### The Herbert Bofinger Cottage

- All distinctive, existing exterior building features reflective of the Third Bay Tradition architectural style
- Vertical orientation
- General building form and massing
- Pitched roof extending further on south slope
- Shed roofs over east side and west side doorways
- Shingle cladding and natural wood trim detail
- Building placement and footprint

### Designed landscape

- Landscape and plantings as designed by Bofinger in 1979 (Exhibit A)
- Coast live oak within front yard
- Cluster of redwood trees adjacent to north property line
- Single redwood tree adjacent to east property line

#LMIN2018-0004  
Attachment 1  
Exhibit A

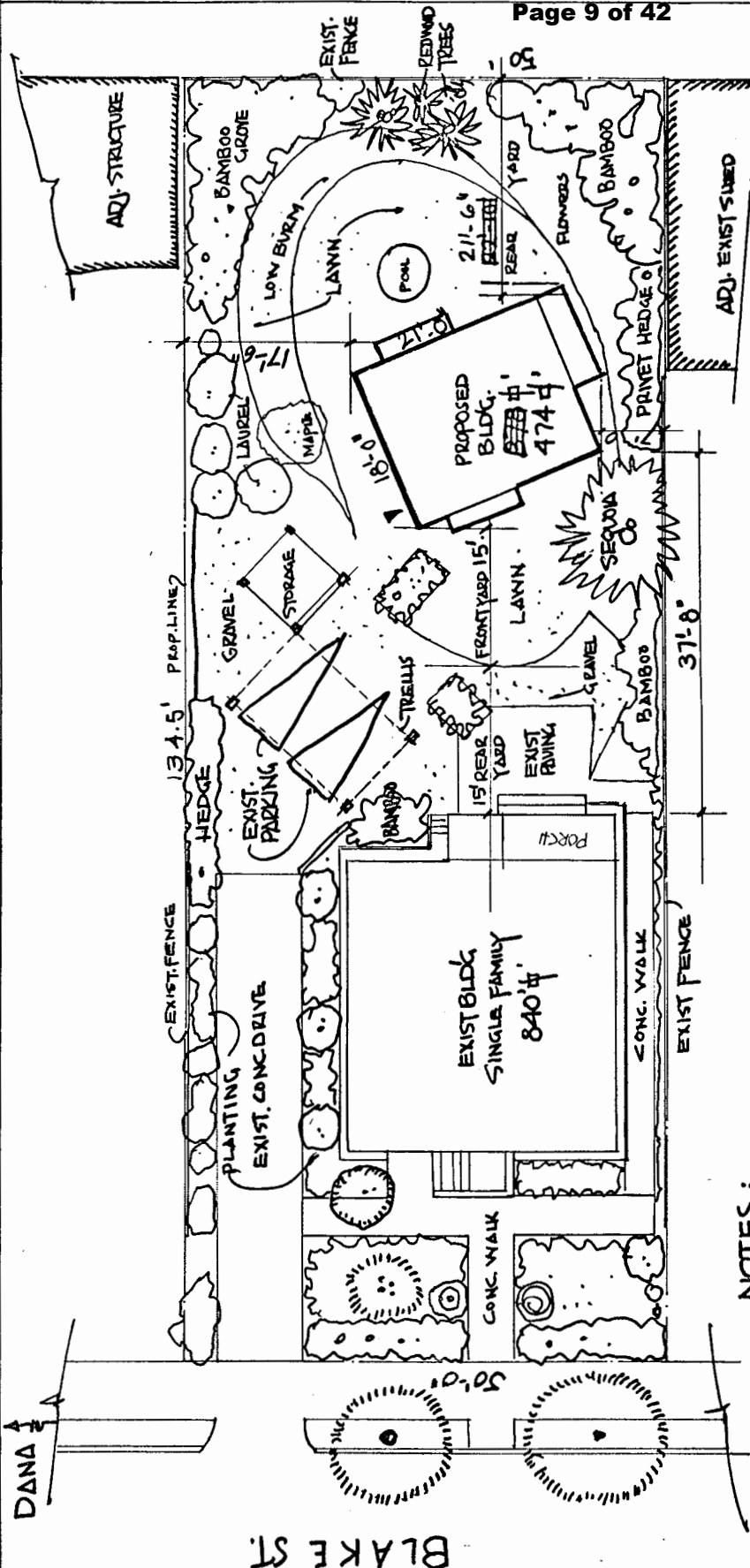
548-6130  
835-9526

H. BOFINGER - OWNER

*Handwritten signature*

*REVISIONS*

LANDSCAPE PLAN 1/8"=1'-0" 2415 BLAKE ST.



NOTES :

- LOT AREA 6,725 sq ft
- ALL LANDSCAPING EXISTING. THE GARDEN AREA IS VIRTUALLY LEVEL EXCEPT FOR A LOW BURN AT LAWN AREA AS INDICATED
- DRAINAGE SYSTEMS EXIST. THERE WILL BE NO CHANGE IN GRADES.
- NO PLANTS WILL BE REMOVED EXCEPT LAWN INSIDE PROPOSED BUILDING PERIMETER



**Application to Landmark 2415 Blake Street**





City of Berkeley  
Ordinance #4694 N.S.  
LANDMARK APPLICATION

1. **Street Address** 2415 Blake Street  
**City** Berkeley  
**County** Alameda  
**Zip** 94704
  
2. **Assessor's Parcel Number:** 55-1838-7  
**Block and Lot:** block I, lot 12  
**Tract:** Leonard Tract  
**Dimensions:** 50 feet x 134.5 feet  
**Cross Streets:** Dana Street, Telegraph Avenue
  
3. **Is property on the State Historic Resources Inventory?** Yes  
**Form #** (none indicated on the form itself)  
  
**Is property on the Berkeley Urban Conservation Survey?** Yes  
**Form #** 17202
  
4. **Application for Landmark includes:**
  - a. **Building:**  **Garden:**  **Other features:**
  - b. **Landscape or Open Space:** **Natural**  **Designed**  **Other**
  - c. **Historic Site:**
  - d. **District:**
  - e. **Other:**
  
5. **Historic Name:** George Wilson house  
**Commonly Known Name:** NA
  
6. **Date of Construction:**
  - a. **Factual:** 1885-86 (original house construction)
  - b. **Approximate:** 1978 (carport and storage shed); 1979 (back cottage); 1987 (addition to main house, and an outdoor stairway)

**Source of Information:** June 1885 issue of *California Architect & Building News*; carved "1886" in cement slab; "improvements" assessment figure for 1886; and regarding post-1974 work, diary of (and "Landscape Plan" drawn by) then-owner Herbert J. Bofinger
  
7. **Architect:** M.J. Welch for the original house construction; Herbert J. Bofinger for the post-1974 work
  
8. **Builder:** J. Spencer for the original house construction; Herbert J. Bofinger for the post-1974 work

9. **Style:** Italianate Cottage (main house); contemporary (carport, storage shed, back cottage, and outdoor stairway)

10. **Original Owners:** George Wilson  
**Original Use:** dwelling

11. **Present Owners:** Paul E. Matzner TR

12. **Present Use:**

|                       |               |   |        |   |            |       |
|-----------------------|---------------|---|--------|---|------------|-------|
| <b>Residential:</b>   | Single Family | x | Duplex | x |            |       |
|                       | Multiple      |   |        |   |            |       |
| <b>Commercial:</b>    | Office        |   | Store  |   | Industrial | Hotel |
| <b>Institutional:</b> | School        |   |        |   | Hospital   | Other |

**Current Zoning:** R-2A  
**Adjacent Property Zoning:** R-2A, R-3

13. **Present Condition of Property:**

|                  |           |   |      |   |      |      |
|------------------|-----------|---|------|---|------|------|
| <b>Exterior:</b> | Excellent | x | Good |   | Fair | Poor |
| <b>Interior:</b> | Excellent |   | Good | x | Fair | Poor |
| <b>Grounds:</b>  | Excellent | x | Good |   | Fair | Poor |

**Has the property’s exterior been altered?** Yes, but the property has retained historic integrity.

14. **Description:**

**The Main House.** The property’s main building (see Figures 1 through 7) is a wood-frame house in the style called Italianate Cottage.

It has a low-pitched hip roof, whose projecting eaves are visually supported at regular intervals by nicely carved brackets. The brackets normally rise from a prominent, handsome band of paneling that runs directly below and parallels the eaves. The building’s strongly horizontal feeling is additionally expressed by the ornate cornices that project above each of the front facade’s *pairs* of windows and, even more so, by the cornice above the front entry.

Yet the house also has some distinctive Italianate features with vertical thrust. These include the tall, narrow front doorway and the tall narrowness of the *individual* windows as such in the building’s front, west, and east walls. Verticality is also notably expressed by the carved sidepieces that directly flank the front entry and each of the front facade’s individual windows.

Set back slightly from the facade’s main surface is the paneled front door itself, which appears to be original. On it and perhaps also original is a metal device that when duly *twisted* acts as a bell announcing that someone wishes to enter.

The present front porch is small and rather simple and is accessed, on one side, by a short flight

3

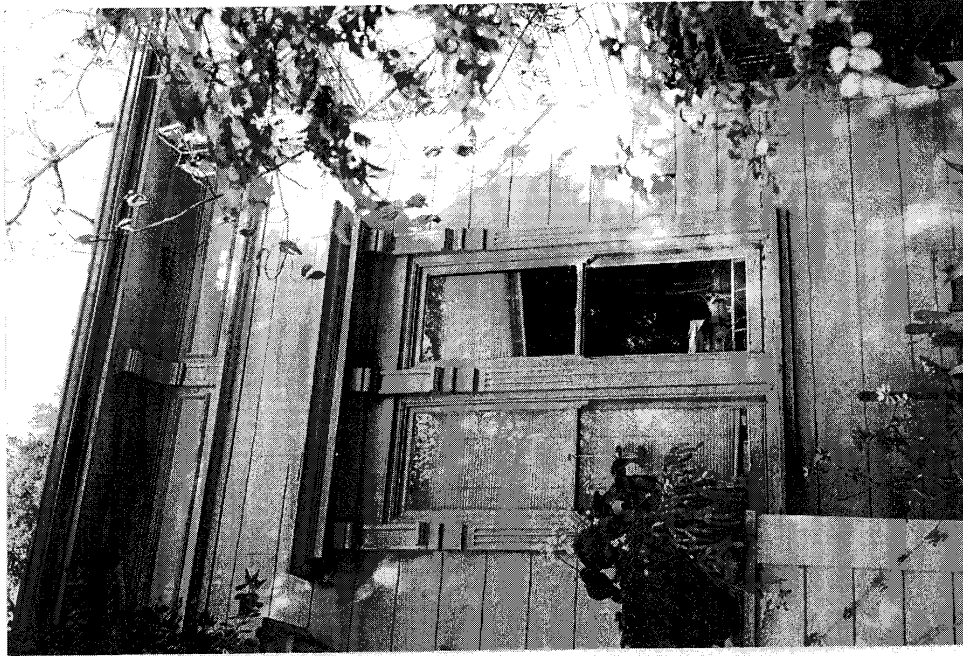


*Figure 1. The main house viewed from the street*



*Figure 2. Bracketed eaves and band of paneling*

4

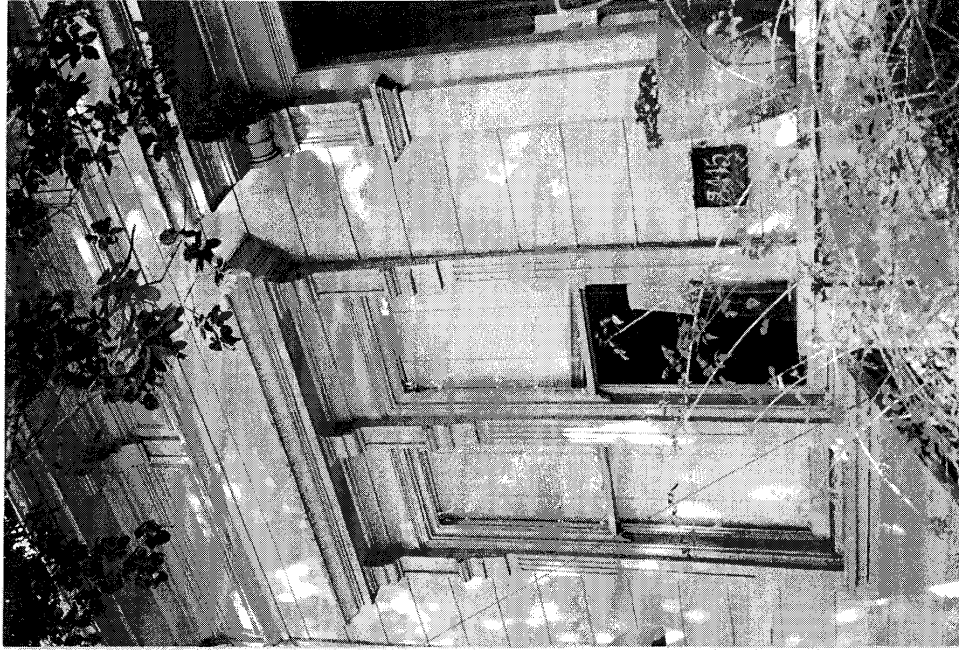


*Figure 4. Living-room windows and their surrounds*



*Figure 3. Front entrance, and adjacent window, with cornices and sidepieces*

5



*Figure 6. Front facade's westernmost windows and their surrounds*



*Figure 5. Oak tree and view toward main house's west side*

of steps that directly adjoins the main building wall.

Each of the house's east and west sides has a single window, which is tall and narrow but has a surround that is simple rather than ornate.

The building's north face is more complex. Accessed from outside via a short flight of wide steps is the main level's back porch (seen in Figure 7), one area of which now is partly enclosed and contains a washer and a drier. Near those appliances is a door from the adjacent kitchen. Also facing north onto the back porch is a tall window. This window's surround has simple sidepieces but a top and base that are notably carved, and even much of its glass appears to be original. Immediately west of that porch is a small but specially designed room (accessed from indoors) in which there is a bathtub. Above and wider than the bathtub room there now is a sizable open balcony that supplies access to the building's present small upper unit, to help provide space for creation of which a part of the original north-facing roof and eaves, as well as two relevant carved brackets, were raised by a few feet. This balcony itself is reached via a segmented, outdoor stairway that starts up from a yard surface farther north.

Immediately west of the above-mentioned bathtub room are some outdoor steps that descend to a small paved area onto which the house's basement door faces.

Most of the main house's exterior wall areas are now coated with asbestos shingling, but compatibly so. This material (applied in 1950) does not extend onto the historic doorway and window surrounds, ornamental paneling, and carved brackets.

Inside the house's main level, most of the basic spaces per se evidently remain as originally outlined. The floor's four largest rooms currently serve as the kitchen, the living room, a bedroom, and a space potentially usable either as a dining room or as a second bedroom.

**Other Structures on the Site.** Northwest of the main house—and partially bordered by the above-mentioned outdoor stairway's middle landing—is the open-sided, timbered *carport* (see Figure 8). Instead of paralleling the property's side lot lines, this is set at about a 45-degree angle with respect to them.

Adjacent to part of the carport is a *storage shed* (seen in Figure 9). This, too, is placed at about a 45-degree angle in relation to the side lot lines.

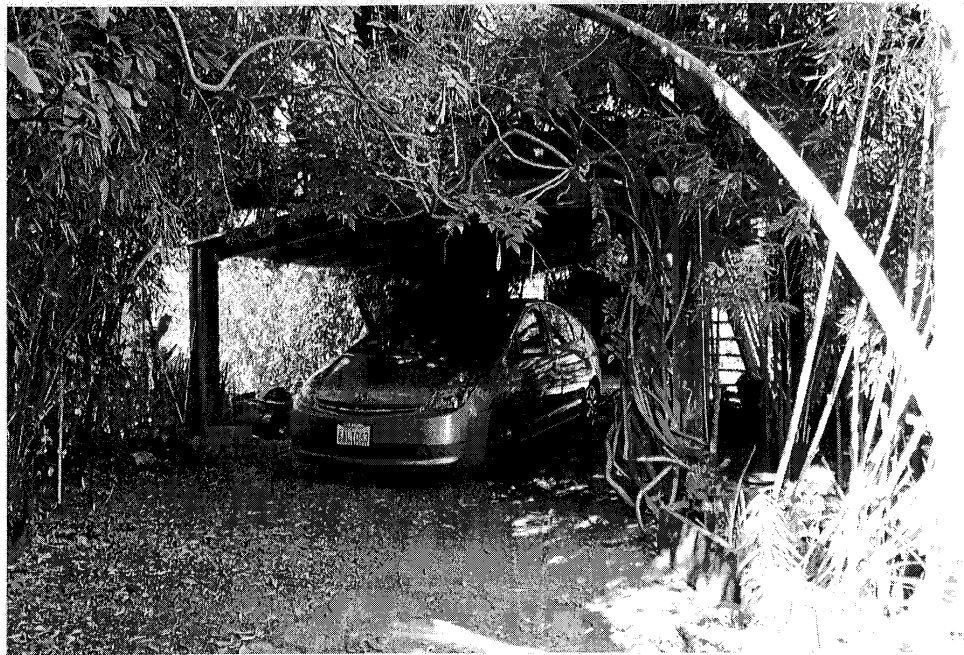
Set at a different but quite large angle, and located roughly midway between the main house and the rear lot line, is the special *back cottage* (seen particularly in Figures 10, 11, and 14). This has a notably sloping roofline but a smallish footprint that is enabled by putting the dwelling unit's sleeping area on a mezzanine. In its special, quiet location the brown-shingled cottage adjoins lush greenery, and one of its doors faces a patio that is described in part of the next paragraph. In a manner rather as Frank Lloyd Wright would have used, the cottage is well integrated into the adjacent landscape, which includes nearby redwoods.

**Yards and Greenery.** Aided by extensive planting and by the angled placing and sensitive

7



*Figure 7. Main unit's back porch and some nearby features*



*Figure 8. Carport*

8



*Figure 9. Storage shed and part of outdoor stairway*



*Figure 10. View into part of the greater back yard*





Figure 12. Pathway into north patio



Figure 11. Back cottage

10



*Figure 13. Part of north patio and adjacent redwoods cluster*



*Figure 14. Single redwood (center background) and part of the back cottage*

design of the carport, storage shed, and back cottage—and with some interesting ground-surface undulations within it—what feels like a *greater back yard*, part of which is seen in Figure 10, flows sinuously and verdantly from the main building to the property's northern lot line. One of its features is (near the main house) a *sitting area*, beside which are a sizable pond and two sculptures done by the property's former owner Herbert J. Bofinger. From the sitting area a path runs, beside planted space and one edge of the back cottage, to reach the unique *patio* (partially shown by Figure 13) onto which one of the cottage's doors faces. Especially suitable for quiet contemplation, this patio features a pool, covered by crosshatched bamboo, in the center of which stands a columnar fountain sculpture. And currently in or beside the patio there are interesting pots, a concrete bench, and a sizable patch of multi-colored tiling.

The greater back yard's vegetation is especially prominent along its north and east sides. Particularly important are (a) the tight cluster of several redwoods that is in between the above-described patio and the northern lot line and (b) the single redwood that is adjacent to the back cottage and a side lot line and is partially shown by Figure 14.

The main house's own eastern side yard is just a few feet wide. Its western side yard is considerably wider and accommodates a driveway, which itself extends from the street to the carport. Though a transverse fence now crosses the driveway, it has a wide gate that can be opened to let cars go through. This side yard also contains a planting strip with flowers.

Within the property's front yard, the most distinctive feature is a coast live oak (see Figure 5). Currently on ground adjacent to the oak there are irregularly shaped cement plates, while other parts of the yard surface are lushly planted. The front yard's southeast portion is currently occupied by a dense grove of bamboo.

**The Neighborhood.** The 2415 Blake property is in the northeastern part of what is often called the LeConte (or Le Conte) neighborhood, using the longtime former name of the public school within it. This area's boundaries are typically defined as Dwight Way and Ashby, Shattuck, and Telegraph Avenues (the last-mentioned two of which have commercial strips along them).

Most of the overall neighborhood's residential structures date from before 1930, and many of those even from before 1900. Their building heights generally range from one to three stories, and their specific architectural styles often vary from lot to lot. But in most cases they sit comfortably together, often aided by mature planted yards, within streetscapes that are both interesting and harmonious.

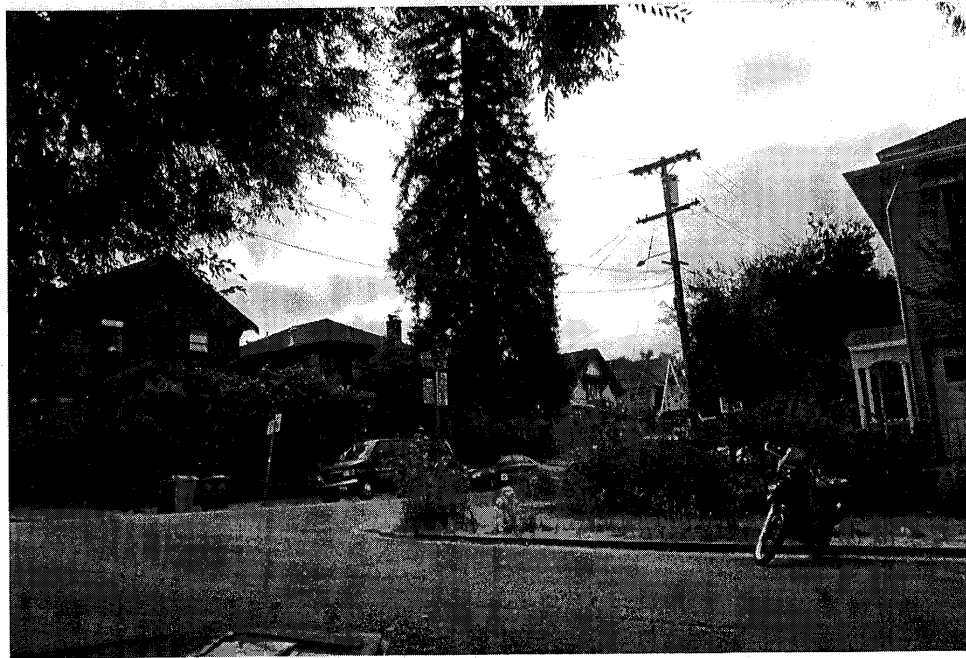
Sadly that cannot be said regarding various of the buildings that were constructed after World War II—especially ones dating from 1960 to 1975. Post-1960 buildings are mostly located within the neighborhood's portion between Dwight Way and Carleton Street. These generally range in height from two to five stories; there is also one nine-story building. A few of them, such as the large one at the Blake/Ellsworth intersection's northeast corner, were designed with serious effort to harmonize with their surroundings. But in other cases, like that shown by Figure 15, contrasts between new and old are stark and jarring.

One streetscape which has notably escaped such disruption is on Chilton Way (see Figure 16).

12



*Figure 15. A scene on Blake Street between Ellsworth and Dana*



*Figure 16. Houses on Chilton Way*

This one-block-long street is consistently bordered by houses of similar scale and feeling, with duly and in some cases uniquely planted front yards.

#### 15. History:

**Development of the Neighborhood.** Originally the whole general area was grassy open land, across which ran branches of Derby Creek with riparian lines of trees along segments of their extent. This eventually became part of the Mexican land grant Rancho de San Antonio.

Then during the 1850s—through a complex pattern of events including claims, squatting, court action, and sales—the future LeConte neighborhood’s portions north of today’s Russell Street were acquired by (a) James Leonard east of a line roughly matching today’s Ellsworth Street and (b) George Blake west of that line. Leonard’s and Blake’s holdings also extended north of Dwight Way, but in 1864 their then still-remaining land north of Dwight was bought by the College of California to become part of the “College Homestead Tract.”

Leonard himself was a farmer, and no later than 1855 he began farming in the area. During the 1850s the Leonard house was built near the north branch of Derby Creek: proximity that offered a high water table for wells. In 1860 Leonard established the area’s first east-west road: the route we now call Dwight Way.

In 1868 the State Legislature established the University of California, into which was merged the (till then privately owned) College of California. The University held classes in Oakland (as the College had done) until construction on the Berkeley campus enabled classes to start there in 1873.

Meanwhile, James and Margaret Leonard divorced. He moved to southern California, but she and some of their children stayed in Berkeley. Under the 1868 divorce settlement she obtained the Berkeley property, and in the ensuing decades she would engage in numerous land transactions.

One of those was in 1875 when she sold a chunk of land (bounded by today’s Blake Street, Telegraph, and Parker and a line some 125 feet east of Dana) to Juan Geraldo Montealegre Mora. He belonged to the family of Costa Rica’s former president Jose Mora Montealegre Fernandez, who in 1870 had fled that country when his own son-in-law the then president was ousted by a coup. On this Berkeley land a substantial house was built in 1876 or 1877. Though in 1883 the property would be sold, the house itself remained there for many years.

But Margaret Leonard’s biggest real estate venture was when, later during 1875, the “Leonard Tract” map was filed that included all of her remaining land. This was the general area’s first subdivision south of Dwight Way. Its own street grid extended the pattern that had already been used for the College Homestead Tract north of Dwight.

Figure 17 shows most of the Leonard Tract, which also reached south to Russell Street. Note that the map’s “Humboldt Avenue,” on which a horsecar line then ran, was what we now call Telegraph Avenue—and that the tract even included some acreage east of that route.

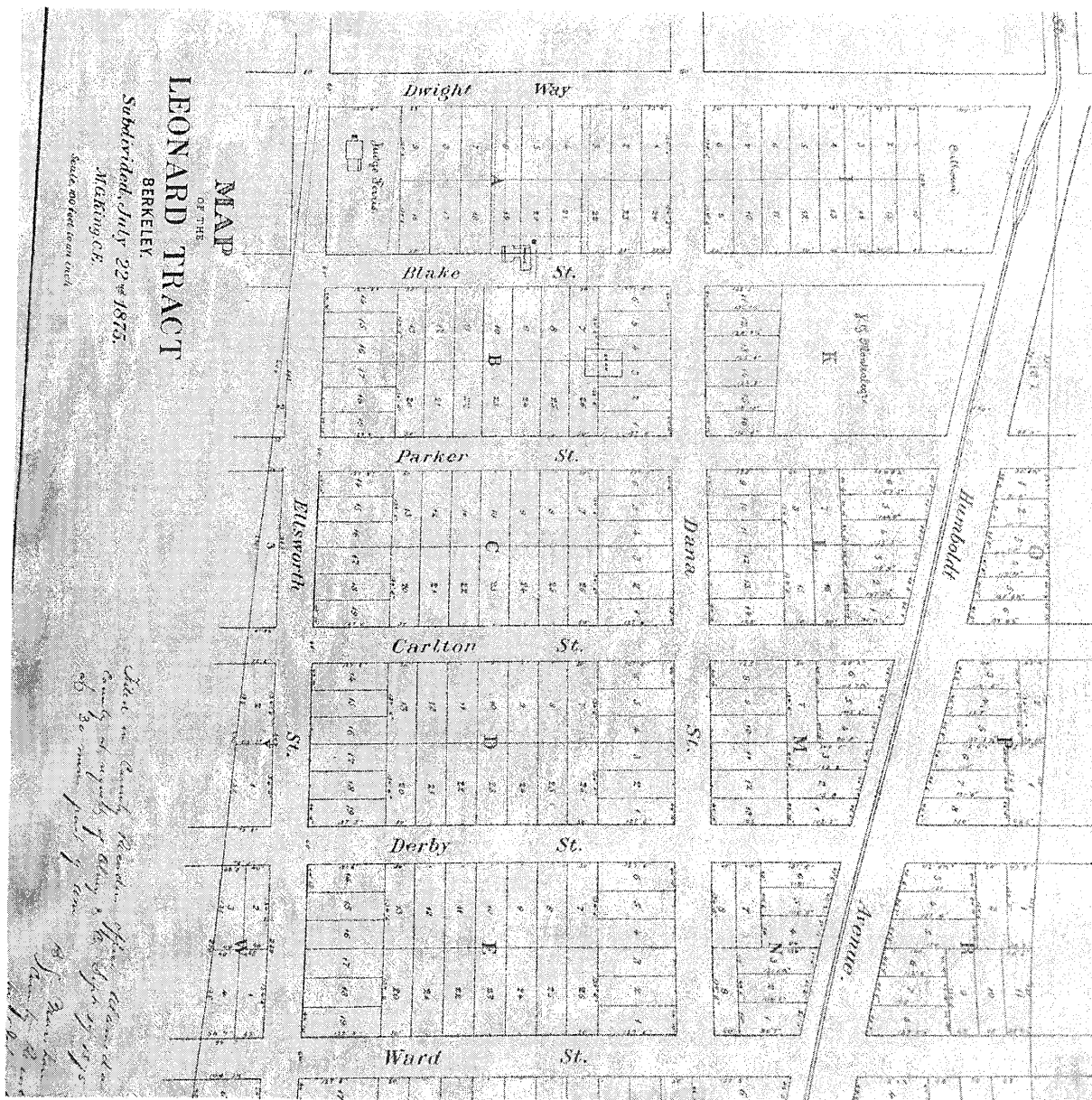


Figure 17. Northern and middle parts of the 1875 Leonard Tract map

The tract map recognized the already-defined extent of the Montealegre property. It also depicted a few already-existing buildings, including the Leonard house itself with its footprint overlapping the map's Blake Street about midway between Ellsworth and Dana. (Blake Street would not physically go through that point until later, when Margaret Leonard's new house had been built on a nearby lot.)

In 1876 George Blake subdivided his own land, and in doing so he extended westward the grid pattern that the Leonard Tract map had used.

Just a small percentage of the Leonard Tract's lots sold at first; and even after lots would be bought, many of them would long remain undeveloped. But ongoing lot sales would continue to be an important source of income for Margaret Leonard, who lived till 1898. She also leased out some of her land, such as to truck farmers.

Meanwhile though the City of Berkeley incorporated in 1878, it then covered much less territory than it now does. Within the Leonard and Blake tracts the southern city limit initially was about midway between Blake and Parker streets. The rest of the neighborhood was not annexed till 1892.

As of 1888 much of the area's acreage was still farmland, though some pockets of development were already underway and the rate of development would soon increase. But within the general neighborhood some farming continued till after 1900.

Figure 18 shows the 1902-03 Sanborn map's portion for the vicinity around 2415 Blake Street and illustrates how, even then, there nearby still were many undeveloped lots. But within the new century's first few decades nearly all of the LeConte neighborhood's remaining open lots got built on. One notable change involved the former Montealegre property, which was subdivided in 1909. (The former Montealegre house itself was moved to the southeast corner of Parker and Dana streets.) One part of this subdivision involved creating Chilton Way and the lots along it, which parcels were built on within the next several years.

Some of the LeConte neighborhood's vacant lots got developed by *moving*, onto them, buildings that had previously stood elsewhere. And indeed this happened with the lots immediately east and west of the Wilson house. In 1914 a large house (itself dating from the 1890s) was moved to 2417 Blake. And evidently in 1923 a sizable house was moved (from Channing Way) to 2409 Blake.

Meanwhile, Derby Creek's branches within the neighborhood had long remained open (even though some segments had been slightly rerouted). But in the period around 1910 the creek beds were filled in and were replaced by storm sewers beneath nearby streets.

In the 1960s and early 1970s, before City development controls were tightened, many new buildings were constructed within the neighborhood's northern portion. And to make way for them in various cases, existing houses got demolished. Fortunately the dwelling at 2415 Blake escaped that fate.

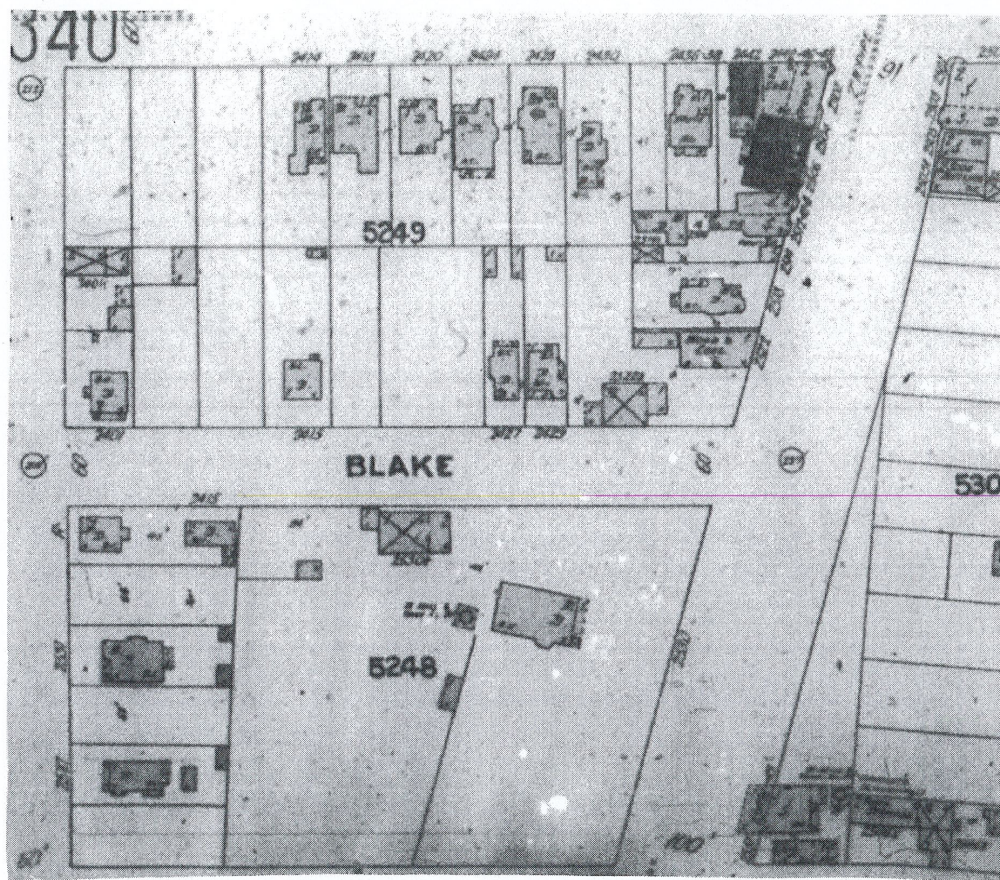


Figure 18. The Wilson house's vicinity as shown by 1902-03 Sanborn map



**Construction of the Wilson House.** In 1885—when most of the neighborhood was still undeveloped—lot 12 of the Leonard Tract’s block I was bought, apparently for \$350 in gold coins, by San Francisco banker George Wilson. He then proceeded to have a house built on it.

There apparently is some minor inconsistency between sources regarding the house’s exact construction date. A 1975 newspaper article said the dwelling was “completed in 1887.”\* And a 1974 letter by Eda McLaughlin (evidently then the widow of a direct descendant of George Wilson) said the house was built in 1887.\*\* But when the same man who had written the newspaper article later filled out the State Historic Resources Inventory form about the house, he indicated the “Year of Initial Construction” as 1885. He may have based that on the “1-story frame East Berkeley, owner: G. Wilson” entry, with a \$1,000 figure, in the June 1885 issue of *California Architect & Building News*. That entry plausibly reflected the *contract* to build, and it is also plausible that actual construction began during 1885. But a cement slab in front of the house’s basement door shows, carved into it, the year “1886.” It is unlikely that the rather small house’s actual construction work continued into 1887. And assessment data for 1886\*\*\* showed the property with the “improvements” figure of \$500: a sizable amount during that era.

So evidently the house’s construction occurred in 1885-86.

**The Property’s Subsequent History.** It appears that the cottage originally had been built as a vacation place for the Wilson family, whose regular home was in San Francisco. But according to a letter that Eda McLaughlin wrote in 1975 to then-owner Herbert J. Bofinger, Mrs. Wilson was afraid to stay alone in the Berkeley house because of the vicinity’s “many roaming and howling coyotes.”\*\*\*\* Later on, after his wife’s death, George Wilson and their daughters began living full-time in the house on Blake Street.

Back then and for many subsequent years the north branch of Derby Creek remained open in the middle of the block. In her 1975 letter Eda McLaughlin said that when her husband was a child he had “played in the creek, under a high weeping willow tree.” She also remarked how the creek had supplied underground water for diverse fruit trees in the house’s back yard: “an apple, plum, cherry and an apricot.”

In that same 1975 letter she said that when George Wilson and his daughters had moved in full-time, “the house had a white picket fence around it with a gate.” Such a fence does appear in Figure 19, which despite the unfortunate shadowing in the photo does give us an early glimpse of the house. This photo obviously was shot at some time before—maybe long before—about 1914 (which, as mentioned above, was when a sizable, now-adjacent building got moved onto the previously undeveloped lot at 2417 Blake).

Sanborn maps from 1902-03 and 1950 (though oddly, not the 1911 map) showed one or two small accessory buildings in the northernmost part of the 2415 Blake lot. If either of those

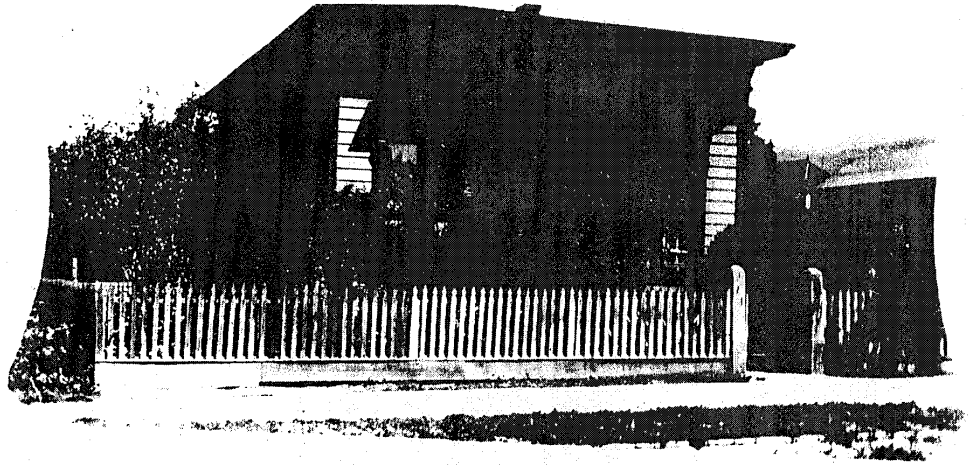
\*Mark Anthony Wilson for the Berkeley Architectural Heritage Association, “Berkeley’s Architectural Heritage” (series title), *Berkeley Daily Gazette*, November 5, 1975.

\*\*Eda McLaughlin, letter to Herbert J. Bofinger, October 24, 1974.

\*\*\*Lyndon Comstock, *On Parker Street: The Evolution of a Berkeley Neighborhood, 1855-1965*, page 161.

\*\*\*\*Eda McLaughlin, letter to Herbert J. Bofinger, June 25, 1975.

18



*Figure 19. The house in some early year*



*Figure 20. The house in about 1939*

structures survived into the early 1970s, it likely got demolished then.

Comparison of the 1902-03 Sanborn with the ones for 1911 and 1950 seems to imply that some porch extension and/or other addition occurred along the house's north side, but it is unclear what happened there during that era.

Figure 20 shows the house in about 1939. At least by then the old picketed front fence obviously had been replaced by hedges. The child seen standing on the small front porch may well have been a direct descendant of George Wilson.

It appears that the property's ownership stayed within the family line, at least via marriage, till about 1973, though the house was unoccupied for a while within that decade's early portion. By April 1974 it was again occupied and the property had been sold to someone named R. Edler. But later during 1974 it was purchased by Herbert J. Bofinger.

That new owner was well equipped to care for the historic property. He had graduated from UC Berkeley with a major in decorative arts, and he had attended the San Francisco Art Institute. He had long work experience as a draftsman in prominent San Francisco architectural offices. On his own, he had designed some houses. And he had done some work with plant nurseries and landscapers. He was fascinated by Japanese and Chinese landscape and culture: fascination symbolized by a painting, from the Hiroshige studio, that is still prominently displayed within the Blake Street main unit's entrance hall.

It appears that for exterior work done at 2415 Blake during the years after he bought the property, Bofinger was both designer and builder, directly retaining workers and/or subcontractors as needed (and/or sometimes doing physical work himself).

In 1975 he did painting and repair work on the house (and replaced its small old front porch with the small new one visible in Figure 21). He energetically also did extensive regrading and landscaping work, one part of which was planting some redwoods adjacent to the northern lot line.

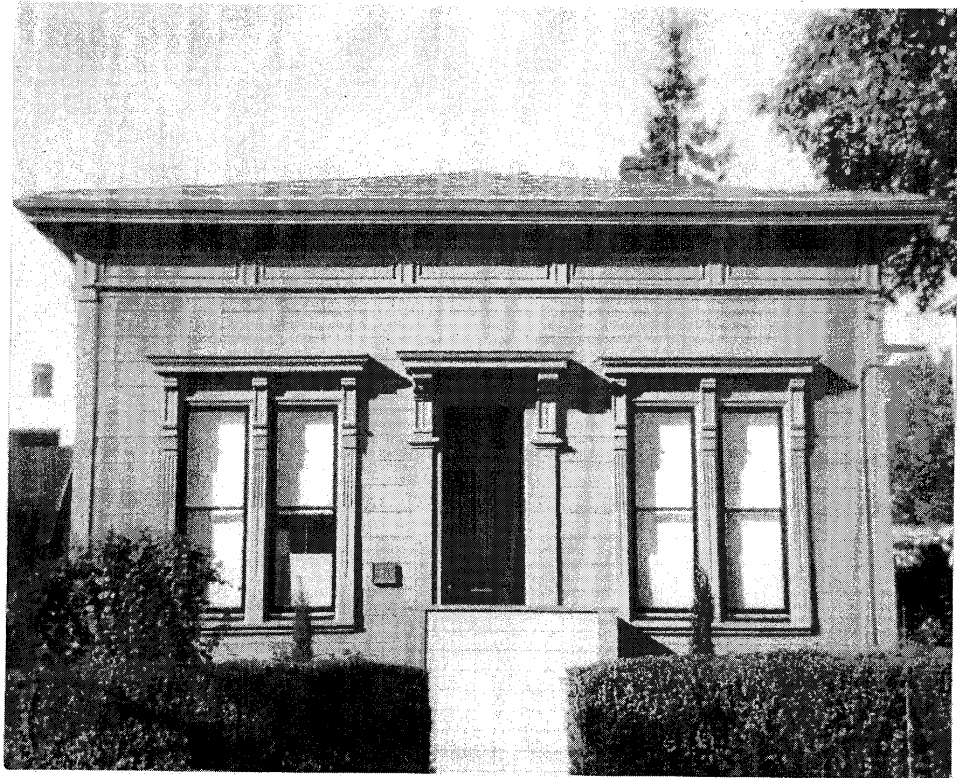
Then within the dozen-year period after 1975 Bofinger constructed the present carport, storage shed, back cottage, and segmented outdoor stairway; made above-mentioned changes to the main house that included some altering on its north face; and did additional planting and landscape work. In designing these projects he kept well in mind the property's historic character.

Dating presumably from January 1979 is Figure 22, which photo appeared on the pertinent form that was filed that month for the State Historic Resources Inventory.

- 16. Significance:** This statement of significance is organized under pertinent landmarking criteria that are contained within Section 3.24.110 of the Landmarks Preservation Ordinance.

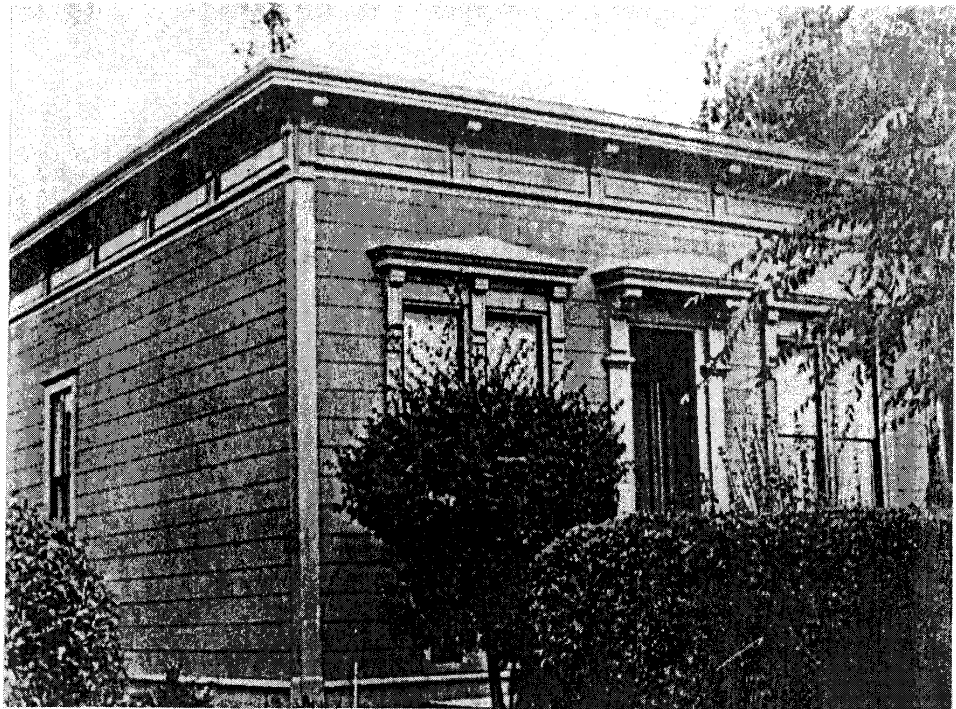
**“Architectural merit: . . . Architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric”:**

20



*Figure 21. The house in 1975*

21



*Figure 22. The house in 1979*

Modestly scaled but handsome and distinctive, the property's main house contributes subtly but importantly to the neighborhood fabric. One such benefit is the house's giving some much-needed relief from buildings within the area that are bigger, dull, and/or ugly. Another benefit is that the house very interestingly displays the particular architectural style (now relatively rarely preserved) that, in distinction from Italianate's larger version, is called Italianate Cottage.

With his own long experience regarding design, former owner Herb Bofinger appreciated and respected the architecture of the old house—which he interestingly called a “workingman’s Victorian.” Though he made some alterations to it, he did them with sensitivity and the house has retained historic integrity.

**“Cultural value: Structures, sites and areas associated with the movement or evolution of religious, cultural, governmental, social and economic developments of the city”:**

In a 1975 article Mark Wilson called the old house “a link with Berkeley’s rural past.”\* Indeed it is one of the LeConte neighborhood’s oldest houses and dates from a time when various plots within the area were still being farmed.

The property’s greater back yard also says something quite pertinent regarding Berkeley’s evolution. It has a lushly planted yet spacious character that (even though most of its individual trees and shrubs are fairly young) helps us recall the era when, as with streams elsewhere in Berkeley, Derby Creek’s north branch still flowed, open, within the area. Indeed it ran in the middle of this particular block—and in doing so it supplied underground water for diverse trees that then grew in the Blake Street house’s back yard.

**“Educational value: Structures worth preserving for their usefulness as an educational force”:**

The property’s main house valuably offers to people (even casual passersby) information relevant to the neighborhood’s, and Berkeley’s, nineteenth-century past and the architectural heritage from that era. With its historic integrity, the house very instructively demonstrates the particular style called Italianate Cottage.

Also very instructive are the back cottage’s special character, placement, and setting. As ably and inspiringly designed by then-owner Herb Bofinger, this unique cottage valuably helps illustrate how truly livable new dwellings could be added to neighborhoods, even within some special properties and/or near to noisy major streets.

**“Historic value: Preservation and enhancement of structures, sites and areas that embody and express the history of Berkeley/Alameda County/California/United States. History may be social, cultural, economic, political, religious or military”:**

The property’s main house was built in—and valuably helps us understand—the period when

\*Mark Anthony Wilson, for the Berkeley Architectural Heritage Association. “Berkeley’s Architectural Heritage” (series title) article about 2415 Blake Street. *Berkeley Daily Gazette*, November 5, 1975.

the surrounding Leonard Tract's actual development was still just slowly proceeding and various land within the area was still being farmed. And the 2415 Blake lot's much-planted greater back yard subtly but importantly reminds us about relevant history, including the property's former interplay with an open branch of Derby Creek.

In planning for the lot's present back cottage and other new structures, Herb Bofinger thoughtfully sited and designed them to minimize impact on the greater back yard's landscaped character.

That landscaped character is also much appreciated and respected by present owner Paul E. Matzner, who in his past had for years worked as a curator in the Natural Sciences Department of the Oakland Museum of California.

**Historic Value:**

National    State    County    City x    Neighborhood x

**Architectural Value:**

National    State    County    City x    Neighborhood x

17. Is the property endangered? No.

18. **Photographs:** **Date:** September 2018 (cover's lower portion, Figure 2, and Figures 7 through 16); October or November 2016 (cover's upper portion, Figure 1, and Figures 3 through 6); some time before 1914 (Figure 19); about 1939 (Figure 20); 1975 (Figure 21); presumably 1979 (Figure 22) **Repository:** Berkeley Architectural Heritage Association **Photographer:** John S. English (cover and Figures 1 through 16); unknown (Figure 19); presumably A. Ormsby Donogh (Figure 20); presumably Mark Anthony Wilson (Figures 21 and 22)

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**20. Recorder:** John S. English **Date:** September 2018 **Organization:** NA

RECEIVED

NOV 20 2018

LAND USE PLANNING

Fatema Crane, Secretary  
Landmarks Preservation Commission  
1947 Center Street  
Berkeley, CA 94704

November 20, 2018

Re: **ADDITIONAL INFORMATION RELEVANT TO 2415 BLAKE LANDMARKING**

Dear Fatema:

Here is the information—regarding former owner Herbert J. Bofinger—that you requested to supplement the application to landmark the property at 2415 Blake Street.

**Architectural Firms That Had Employed Mr. Bofinger as Draftsman**

Firms for which Herb Bofinger had worked as a draftsman included these, all located in San Francisco:

- . Sabaroff & Dow
- . Marquis & Stoller
- . Harold C. Dow
- . Leonard Mosias
- . Henry V. Chescoe
- . Angus McSweeney / Angus McSweeney John Michael Lee (Associated Architects) / McSweeney & Schuppel Architects Michael D. Kelly Associate — the firm's name varied
- . John S. Bolles

**Houses That Mr. Bofinger Had Designed in Stinson Beach**

In about 1949 a house was built for him on “Lot 20 of Stinson Beach Highlands” (land he owned on Avenida Las Bolinas). And this house was enlarged in about 1954. The named architect for the initial project, and probably also for the enlargement, was Oran A. Jenkins. But in reality Bofinger himself in both cases very strongly influenced the design.

For construction of the following houses, known drawings explicitly named Bofinger as both owner and designer:

- . house built on the north side of Avenida Olema (plans dated March.1959)
- . house at 255 Calle Del Mar (built in about 1971)

Regarding at least some of the above-mentioned three houses, Bofinger himself lived there at least initially but one or more relatives moved in then or later on.

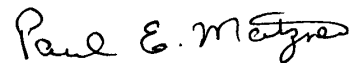
2

It appears that Bofinger designed a house, perhaps on Avenida Las Bolinas, for an old college friend.

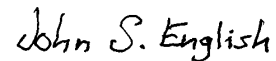
**Material from Mr. Bofinger's Memorial Service**

Photocopied and attached hereto is relevant material from Herb Bofinger's memorial service.

Sincerely,



Paul E. Matzner  
2415 Blake Street  
Berkeley, CA 94704



John S. English  
2500 Hillegass Ave., Apt. 3  
Berkeley, CA 94704



*Please join us for the celebration  
of the life and works of*

*Herbert J. Bofinger*

*Memorial Service, Saturday, February 5, 2000*

*10:00 a.m. to 11:30 a.m.*

*Town & Town Club*

*2401 Dwight Way, Berkeley*

*Reception and Buffet to follow*

*12:00 to 3:00 p.m.*

*2415 Blake Street, Berkeley*

*RSVP Paul Matzner 510-549-8010*

*or Mary Muerle 925-932-1269*

Herbert John Bofinger  
August 25, 1920 – December 1, 1999  
A Life's Landscape

Herb was born in Berkeley, California, a second generation Californian, the oldest child of August and Emma E. Bofinger (nee John). His sister, Beatrice (Bee) was born three years later.

Herb's father, August, was the oldest of six children and from an early age had been the family breadwinner for his mother and five siblings. His great grandfather had immigrated to the United States from Hamburg, Germany, and his grandfather, Jacob, had been born in this country. Although Bofinger is an Alsatian name, the family bearing that name had branched to several different locations in Europe, including Paris and Hamburg. August was born and raised in San Francisco, and his first job was as a hatter for the Palace Hotel. He later worked for Gatner and Mattern, the swimsuit manufacturer, where he learned the knitting trade. After the San Francisco earthquake and fire, which forced the family to abandon their dwelling on Minna Street and camp in Golden Gate Park, August moved the family to Berkeley. While in Berkeley, he attended the German Methodist Church, where he met Emma E. John, the church's organist. Emma's father was a Welsh sailmaker who immigrated to the United States on a sailing vessel, landing in New York. At this point, he took up the occupation of surveying and worked his way in this capacity through the West to the Columbia River in Oregon, after which he moved to San Francisco. As a result of his surveying, he was offered acreage in the Berkeley Hills for a \$1 per acre, which he turned down as too inaccessible. He later worked for Simpson and Fisher as a sailmaker, and his son Edward also apprenticed as a sailmaker. He married in San Francisco to a woman who was originally from Kiel, Germany, but his first wife died in childbirth. He sent for her sister, who arrived with their mother; he married the sister and had three boys and one girl, Emma. Neither Emma nor August completed more than six years of schooling as they were required to help their families. They were married on November 19, 1919. Ultimately, August opened the Bofinger Knitting Mills on Alice Street, Oakland, and was quite successful during the Depression and the Second World War in this business.

During the first seven years of Herb's life, he lived in Berkeley. The pictures that exist demonstrate Herb's early ability with mechanics of building, as he worked on his wooden car. Around the time he was seven, he contracted scarlet fever and was quarantined; Bee lived with her grandmother next door for a prolonged period to avoid exposure to the disease. The recollection Herb had from this time was that as a curative, he was required to drink a glass of port each day to build up his blood. This illness required that he miss a great deal of school during his first year. August took the family on his travels

representing the knitting factory, which made men's and boy's sweaters. August is credited with inventing the 'barrel sweater', a V-neck, sleeveless sweater with a long body that could be rolled up to waist-length after which the rolls were used as pockets to store cigarettes and other items. August personally visited department stores throughout California during this period to demonstrate and sell his products. The family would wait in the car, and amuse themselves with playing word games, spelling games, and guessing games.

In 1927 the family moved to a home in San Leandro which August had retained an architect to design. It was a spacious nine room home with gardens in the back and side of the house. Herb lived here until he was drafted into the Army in 1942 (true?) Throughout his school years, as in later life, Herb was an avid reader. He took piano and voice lessons (he had a good baritone voice), and in high school, was in the Honors Society, the yearbook committee and the Junior Prom committee. He also attended the California College of the Arts and Crafts for art instruction. He enjoyed theatrics and costumes, as evinced by the pictures of some creative costumes he had worn as a boy. He was accounted to be a sharp dresser and in the high school yearbook willed his appearance to the class slob. He participated in ROTC, but hated the war games that were played.

At the San Leandro house, Herb and Bee had a playhouse, which was built around a door salvaged by a man who needed work during the depression, and at sixteen Herb built the first of his many ponds in the back yard, which became the swimming hole for the neighborhood kids.

Herb graduated from San Leandro High School in January 1939. He initially attended the School of Fine Arts in San Francisco (now the Art Institute in San Francisco), and the University of California at Berkeley, in the School of Environmental Design. Art pieces, primarily sculptures that he completed during that survive in his garden and home. Shortly after the start of America's involvement in the Second World War and the institution of the draft, Herb was drafted into the U.S. Army, there being no student deferments in those days. He was stationed at Tonopah, Nevada and Denver. While in the service, his entire his barracks were identified or identified themselves as homosexual. Herb was placed in a military mental hospital for a time, becoming a librarian, but was ultimately dishonorably discharged for being gay. When the U.S. government rescinded the dishonorable discharges some years ago, Herb refused to apply for the amnesty, so strong was his distaste and cynicism for how the government had treated not only him, but others in his unit and throughout the military.

When Herb returned from the service, he worked in a shipyard in Mare Island, and he worked at Hormel Foods, a meatpacking plant. After the war, he spent a year or two working for Lucien Marsh, who imported Asian antiques, and lived for a year in Monterey managing a retail outlet. He resumed schooling at Heald College in San Francisco, where he completed a drafting course. Following this, he began working for a variety of architecture firms in the city, including John Bole, Sweeney, Marquis and Stoller. One of his commercial projects included the bell tower for St. Mary's Cathedral in San Francisco. He assisted architects with their private projects as well, mostly home remodeling. And, after the move to Stinson Beach, he worked as a nurseryman.

In 1948, August suffered a stroke that left him incapacitated until his death in 1952. Following the war, the Bofinger Knitting Mills had undergone bankruptcy, due in part to failed attempt by August's then-partner, Otto Klinger, to start a womenswear line. The factory was moved to Fremont Street in San Francisco, and then back to Oakland. Herb was charged with arranging the sale of the factory and dispersal of assets. He had begun work at Stinson beach on a bachelor house but expanded his design in order that his family could move to the location in 1949.

Herb's first solo building was the precursor of many of his design ideas to come. It was an open plan, where the transition between indoor and outdoor living was transparent. He carefully sited his designs to take advantage of views, patios, and gardens. During his period at Stinson Beach, which lasted until 1969, Herb frequently worked with his friend Otto Reutinger [spelling, please] on his building project. His first house, and his second, were based on concrete block materials and were reminiscent of Frank Lloyd Wright. He built a home for an old college friend across the street from the family house. The 'round house' was a wooden structure. Herb did most of the work on these houses himself, and afterwards always lived in them for a time to see how they 'worked' which gave him ideas for his next project. Herb completed these projects while continuing to work as a draftsman in the City. He attempted a short foray to live in San Francisco, as access to services was felt to be easier for his mother, who was by then quite ill, and his sister, who was acting as primary caretaker, but did not like city life and moved back to Stinson.

In 1969, following the death of his mother, Herb liquidated his Stinson Beach assets and moved to Berkeley. He found and bought the 2415 Blake Street house that became his 'home base' for the remaining thirty years of his life. While in Berkeley, Herb continued his building projects, although generally on a smaller scale. He designed rolling vistas which included redwood trees in the backyard; and later, with Marty Reutinger as the builder, he added the back cottage without seriously disturbing his garden plan. He

included two ponds and many small meditative spots. His last major project was designing and building a second floor studio without damaging the style or integrity of the original building. He also did many smaller remodeling projects, including building the 'fantasy bathroom' and the carport. Herb became the master of the small space, viewing and rearranging interiors until they found a synergy of their own; and even then, interiors were subject to change in quest of a new synergy of art, the objects he used in his daily life, and the demands of the structure which bind everything together.

While in Berkeley, Herb stayed connected with the friends that he had made over the years, stretching back to high school. He built a circle of friends and acquaintances to add to many people he had met over the years and had kept in touch. It was also during this period that Herb also embraced a more openly gay lifestyle and entered into a lifelong committed relationship with Paul Matzner, his partner of 24 years. Herb's character, that of being a good listener, a generous host, and a gentle and supportive friend, brought many people to his door and kept them coming back to visit. He loved to debate politics and history and even the most revered icons would fall before his caustic opinion, if the reverence made no sense. He consulted frequently with friends on building, interior and garden design, giving advice freely. He loved a good game of gin rummy and anyone who was a repeat visitor to the house learned to play the game, much to everyone's mutual enjoyment.

During this time, he revived his interest in making music as well as listening to it, and frequently played piano, taking up lessons after a hiatus of many years. With Paul, he traveled to Alaska, New York and to points in California. He also became more active in gay affinity group functions. Until his health began failing several years ago, he remained physically vigorous. He maintained his mental vigor until the very end, in no small part due to Paul as his primary caretaker, and the efforts of Sandra and Jane.





Community Environmental Advisory Commission

## INFORMATION CALENDAR

January 22, 2019

To: Honorable Mayor and Members of the City Council  
 From: Community Environmental Advisory Commission (CEAC)  
 Submitted by: Michael Goldhaber, Chairperson, CEAC  
 Subject: Referral Response: Removing Plastic Microfibers from the Water Supply

### INTRODUCTION

On April 24, 2018, the City Council adopted a referral sponsored by Councilmember Harrison which asked CEAC to assess the City of Berkeley's capacity to participate in an educational outreach program to inform City residents of the harmful nature of plastic microfibers, and to refer any findings to the East Bay Municipal Utilities District (EBMUD). A copy of that referral is included as Attachment 1 to this report.

At its November 8, 2018 meeting, the Commission approved the referral response for removing plastic microfibers from the water supply. M/S/C (Gould, Kapla). Ayes: Simmons, Varnhagen, Ticconi, Kapla, Goldhaber, Gould. Noes: None. Absent: Hetzel, Lim. Abstained: None

### BACKGROUND

Human-made microplastics are now ubiquitous and persistent in aquatic environments, and are derived from several sources, including the washing of clothes. Every level of the food web is exposed to microplastics, from primary producers to higher trophic-level organisms. Not much can be done to remove microplastics from clothes wash water; the efficiency of the few control methods on offer has not been well documented.

Microplastics are defined as plastic pieces or fragments less than 5 millimeters in diameter. Microplastics have been accumulating in the marine environment for several decades, and likely to increase in abundance given the current dependence of a growing human population on the use of persistent plastics. Microplastics, in origin, can be primary products, that is purposefully manufactured, or secondary products, derived from the fragmentation of plastic items. They are a persistent pollutant, already present in all marine habitats. It has been estimated that 10% of globally produced plastics in 1997 ended up as plastic oceanic waste. If these estimates are correct and these trends continue, an estimated 38 million tons of debris would have entered the marine environment in 2015 alone.

Sources of aquatic microplastic pollution include: (1) microbeads used in personal care products such as facial scrubs and toothpastes, and pellets (called nurdles) used as precursors for industrial products; (2) microfibers derived from washing clothes made with synthetic materials; and (3) fragments of larger plastic items. In general, the most abundant marine microplastics detected are polyethylene from plastic bags and storage containers, polypropylene from bottle caps and ropes, polystyrene from utensils and cups, and polyamide (nylon) from ropes, fishing nets and textiles. Based on a study of the Los Angeles watershed, 90% of plastic debris by count, and 13% by weight are microplastic of less than 5 millimeters.

As part of the Regional Monitoring Program, San Francisco Estuary Institute scientists characterized Bay surface waters and effluent from waste water treatment plants for microplastic contaminants such as Styrofoam, microbeads used in personal care products, fragments from the degradation of larger plastics such as bottles, nurdles as precursors to plastic manufacturing, and fibers from clothes and fabrics. The eight Waste Water Treatment Plants, including EBMUP, studied discharged an average of 6,900,000 particles of microplastic per day with fibers being the dominant microplastic. Treatment plants with higher solids removal efficiency did not remove more plastics than the less efficient treatment plants. Fragments, including microbeads were the second most abundant microplastic in treatment plant effluent. In the Bay, fragments were the most abundant microplastic measured with fibers being the second most abundant type of microplastic.

One estimate is that in 2050 there will be more plastic than fish in the sea.

### ENVIRONMENTAL SUSTAINABILITY

Knowledge about the effects of microplastics is limited, but there are concerns that these particles could have adverse physical and toxicological effects on marine species. The consequences of ingestion of microplastics by marine organisms are not fully understood. However, laboratory studies have found that microplastics can harm small aquatic organisms that eat them, by interfering with feeding, digestion and reproduction, for example. There is also evidence that particles can be retained for several weeks after ingestion by marine organisms. However, more studies about such physical effects are needed,

There is also some concern that the ingestion of microplastics can cause physical effects, such as internal abrasion and blockage, and may also provide a pathway for the uptake of harmful chemicals by marine organisms. Species that show a high incidence of debris ingestion may therefore be susceptible to population-level effects, which could have negative consequences for endangered species with small populations that are exposed to multiple stressors.

Uptake of microplastics has recently been reported in commercially reared shellfish grown in open systems, indicating that microplastics are being ingested by humans via seafood. Plastic fibers are now showing up in fish and shellfish sold in California for human consumption. The potential health risks to humans of ingesting microplastics from the marine environment are not fully understood.

### POSSIBLE FUTURE ACTION

The current water and wastewater technologies do not remove plastics from the environment. As such, removal of plastics from the environment is not currently feasible via treatment, leaving source removal as the only alternative to lower plastics debris in the aquatic environment.

The following is derived from a publication of the Plastic Pollution Coalition. Every time you wash synthetic fabrics made of acrylic, nylon, and polyesters, including fleece, trousers, blouses, socks, and yoga pants, millions of microfibers are released into the water. Microfibers are not filtered out by waste treatment plants, so they end up in our waterways and oceans, where they impact marine organisms and the environment. One approach under study to reducing the release of microfibers into the environment involves altering textiles to make them less likely to shed fibers into the environment during everyday use or into water when they are washed. Another approach now available each of us is to:

- Wash synthetic clothes less frequently and for a shorter duration;
- Fill up your washing machine fully, reducing friction between clothes;
- Use liquid laundry soap;
- Use a colder wash setting;
- Dry spinning clothes at low revs;
- When you clean out your dryer, place lint in the trash;
- Purchase a washing machine lint filter or a wash bag, such GUPPYFRIEND from Patagonia or Rozalia Cora Ball (note that their microplastic removal effectiveness has not been verified in any published, peer-reviewed study);
- Speak up and tell clothing designers to choose natural fabrics that aren't prone to shedding;
- Tell your friends and family about microfiber pollution;
- Avoid purchasing cheaply-made, "fast fashion" clothes; and
- Buy clothes made from natural fibers such as cotton, linen, and wool. (However, at least cotton production has its own problems unless organic, namely high use of pesticides and fertilizers that also impact waters around the world.)

The water and wastewater agencies, including EBMUD, are aware of the issue, and participating in studies about plastics in waters. Therefore, outreach to these agencies

may not be necessary. So basically, public outreach and education is the most likely approach to reducing plastics in waters.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

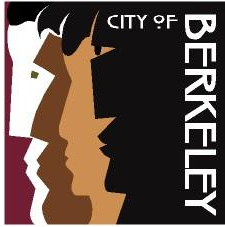
Fiscal impacts are limited to the costs of a public education campaign for which the costs could be minimized if the City were to pursue such a program in conjunction with other local municipal agencies or NGOs.

CONTACT PERSON

Viviana Garcia, Commission Secretary, Planning, (510) 981-7467

Attachments:

1: Council referral from April 24, 2018



[First Last name]  
Councilmember District [District No.]

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** April 24, 2018

**Item Number:** 26

**Item Description:** Removing Plastic Microfibers From The Water Supply: A Referral to the Community Environmental Advisory Commission

**Submitted by:** Councilmember Harrison

Edited to reflect the intention of sending any relevant findings to EBMUD.

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison

Subject: Removing Plastic Microfibers From The Water Supply: A Referral to the Community Environmental Advisory Commission

### RECOMMENDATION

Refer to the Community Environmental Advisory Commission to assess the City's capacity to participate in an outreach program informing residents of the harmful nature of microfibers. [Ask CEAC to refer any of their findings to the East Bay Municipal Utility District and request a report on the organization's water sourcing methods in drought years.](#)

### FINANCIAL IMPLICATIONS

Not applicable, due to its status as a Commission referral.

### BACKGROUND

The harmful nature of microfibers--tiny plastic bits often emerging from synthetic material--is the subject of a fledgling research movement. In recent years, concerned scientists have noted the prevalence of microfibers in a tap water supply and attempted to determine the impact of their presence. In the US, this issue is particularly urgent; according to a study conducted by Orb Media, 94% of their tap water samples contained plastic fibers. That rate ranked as the highest in the world.

Experts believe the toxic materials present in the microfibers could be of potential harm to human beings.

"We have enough data from looking at wildlife, and the impacts that it's having on wildlife, to be concerned," Dr. Sherri Mason, a microplastics expert at the State University of New York in Fredonia, told [The Guardian](#). "If it's impacting [wildlife], then how do we think that it's not going to somehow impact us?"

There are certain preventative measures individuals can take to limit their microfiber emissions. [Machine washing](#) Washing synthetic clothing [in a machine](#) allows these fibers to escape from our washing machines and filter out into [sewage treatment plants like the ones maintained by EBMUD](#) ~~our water streams~~. One study indicates each wash of a synthetic jacket produces up to 2 grams of microfibers. By making a concerted effort to avoid washing one's own synthetic clothing as much as possible, individual steps can be taken to lessen the quantity of microfibers in a local context. [Other potential preventative measures include purchasing industry standard washing bags that filter out microfibers and investing in a top load washing machine.](#)

[Generally, Berkeley residents can be confident in their water quality. In non-drought years, the Sierras serve as the City's primary water source. Because the Sierras lie a distance from any wastewater sources, this water bears no risks of microfiber contamination. However, EBMUD's water sourcing methods in drought years remains](#)

unclear. There is a possibility that microfibers find their way into EBMUD's sewage treatment plants in these conditions, but it will require a dialogue with EBMUD to confirm one way or another.

~~Other potential preventative measures include purchasing industry standard washing bags that filter out microfibers and investing in a top load washing machine.~~

~~Unfortunately, the toothpaste is out of the tube, so to speak. With our water stream already treatment facilities irrevocably potentially contaminated, the City ought to look into measures to curb their impact.~~

~~From the perspective of this Councilmember, an informational campaign is the City's best mechanism for addressing this issue.~~

This item proposes the Community Environmental Advisory Commission compile a list of the most harmful microfiber-related behaviors, consider the most effective methods of distributing this information, and estimate any potential financial cost to the City. Once compiled, the item recommends the Commission send their findings to EBMUD and then request a report on the organization's water collection tactics during drought seasons.

#### ENVIRONMENTAL SUSTAINABILITY

This item intends to improve the City's environmental practices.

#### CONTACT PERSON

Kate Harrison, District 4 Councilmember, 510-981-7140







Office of the City Auditor  
Jenny Wong, City Auditor

INFORMATION CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council  
From: Jenny Wong, City Auditor  
Subject: City Auditor's Office 2018 Peer Review Results

INTRODUCTION

The Association of Local Government Auditors (ALGA) has once 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, 2015 to October 31, 2018.

CURRENT SITUATION AND ITS EFFECTS

Auditors from the City of Toronto and the Los Angeles Unified School District 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 six projects representing 40% of our audits and 58% of our auditing hours over the peer-review period. They 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 suitably designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for the period of November 1, 2015 to October 31, 2018.

*City Leadership's Delayed Response to Audit Recommendations*

While reviewing our office's efforts, the peer reviewers noticed an issue impacting the City: The length of time that some of our audit recommendations remain unaddressed by those responsible for taking action. Implementation of our audit recommendations rests with City management under the direction of City Council, and the peer reviewers commented that Berkeley leadership has not taken action on recommendations going back as far as 2009.

We share those concerns. We regularly communicate with City leadership the need to address our audit recommendations. We also issue quarterly reports on the number of open audit recommendations, releasing our last [report](#) on November 27, 2018.<sup>i</sup> We are currently working on methods to extend our public reporting and further encourage City leaders to prioritize taking action on our audit recommendations.

*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:

- Having detailed audit policies and procedures that provide clear direction and practical, how-to approaches for applying *Government Auditing Standards*.
- Developing workpaper templates that assist audit staff in preparing audit documentation that demonstrates adherence to *Government Auditing Standards*.
- Providing strong supervisory oversight and ongoing monitoring of audit quality.
- Providing staff with continuous on-the-job feedback and regular performance evaluations that clearly emphasize the importance of adhering to *Government Auditing Standards*.

The efforts of many led to the peer reviewer's positive opinion and our ability to demonstrate a commitment to audit excellence. We 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.
- Harriet Richardson, Former Audit Manager whose exceptional knowledge and skills designed the strong foundation supporting our existing quality control system.
- Claudette Biemeret, Audit Manager; Tracy Yarlott-Davis, Auditor II; Farkhad Askarov, Auditor II; Erin Mullin, Auditor I; Caitlin Palmer, Auditor I; Frank Marietti, Former Senior Auditor; Matt Grady, Former Senior Auditor; Lincoln Bogard, Former Auditor II; Myrna Ortiz, Former Auditor I; and Shalyn Pugh-Davis, Former Auditor I who remained committed to upholding our internal system of quality control.

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

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

Due to the influence that nonaudit services have on our ability to remain independent and the increasing restrictions of *Government Auditing Standards* regarding independence requirements, we may propose reasonable and suitable courses of action to permanently eliminate or significantly reduce our City Charter mandated nonaudit activities.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None known at this time.

CONTACT PERSON

Jenny Wong, City Auditor (510) 981-6750

Attachments:

1: 2018 External Quality Control Review of the Berkeley City Auditor's Office with City Auditor Response and Certificate of Compliance

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<sup>i</sup> City Auditor's Snapshot: Quarterly Summary Report on Audit Recommendations 1<sup>st</sup> Quarter Fiscal Year 2018: <http://bit.ly/2UQQmS8>



# 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, 2015 to October 31, 2018



## Association of Local Government Auditors

December 13, 2018

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 from November 1, 2015 to October 31, 2018. In conducting our review, we followed the standards and guidelines contained in the *Peer Review Guide* published by the Association of Local Government Auditors (ALGA).

We reviewed the internal quality control system of your audit organization and conducted tests in order to determine whether your internal quality control system operated to provide reasonable assurance of compliance with *Government Auditing Standards* issued by the Comptroller General of the United States. Our procedures included:

- Reviewing the audit organization's written policies and procedures.
- Reviewing internal monitoring procedures.
- Reviewing a sample of audit engagements and working papers.
- Reviewing documents related to independence, training, and development of auditing staff.
- Interviewing auditing staff, management, and members of the Audit Committee 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.

Based on the results of our review, it is our opinion that the Berkeley City Auditor's Office internal quality control system was suitably designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for audits and attestation engagements during the period from November 1, 2015 to October 31, 2018.

Ina Chan  
Auditor General's Office  
City of Toronto

Kien Hong, CPA  
Office of the Inspector General  
Los Angeles Unified School District



Office of the City Auditor  
Jenny Wong, City Auditor

December 13, 2018

Ina Chan, Assistant Auditor General, City of Toronto  
Kien Hong, Senior Auditor, Los Angeles Unified School District  
Lori Brooks Jaquess, City Auditor, City of Arlington

Dear ALGA Peer Review Team:

Thank you for conducting an external review of the City of Berkeley City Auditor's Office system of quality control. We are pleased that the Association of Local Government Auditors has once again issued an opinion that our 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, 2015 to October 31, 2018.

We are committed to excellence and exemplifying transparency and accountability in government. We appreciate your recognition of our efforts by identifying these areas in which we excel:

- Having detailed audit policies and procedures that provide clear direction and practical, how-to approaches to applying *Government Auditing Standards*.
- Developing workpaper templates that assist staff in preparing audit documentation that demonstrates adherence to *Government Auditing Standards*.
- Providing strong supervisory oversight and ongoing monitoring of audit quality.
- Providing staff with continuous on-the-job feedback and formal performance evaluations that clearly emphasize the importance of adhering to *Government Auditing Standards*.

We would like to express our sincere appreciation to the peer review team and the Association of Local Government Auditors for their work and commitment to ensuring that government auditors adhere to *Government Auditing Standards*.

Respectfully,

Jenny Wong, City Auditor  
City Auditor



The Association of Local Government Auditors  
Awards this

***Certificate of Compliance***

to

***Berkeley City Auditor's Office***

Recognizing that the organization's internal quality control system was suitably designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for audit and attestation engagements during the period November 1, 2015, through October 31, 2018.

*Paul Geib*

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Paul Geib  
ALGA Peer Review Committee Chair

*Kristine Adams-Wannberg*

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Kristine Adams-Wannberg  
ALGA President







# Communications

All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

## **City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

## **Records Online**

<http://www.cityofberkeley.info/recordsonline>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF